

Applicant Details

First Name	Evan
Last Name	Blanchard-Wu
Citizenship Status	U. S. Citizen
Email Address	blanchardwu@uchicago.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>6127 S Woodlawn Avenue, Apt A</div> <div>City</div> <div>Chicago</div> <div>State/Territory</div> <div>Illinois</div> <div>Zip</div> <div>60637</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	2489822915

Applicant Education

BA/BS From	University of Michigan-Ann Arbor
Date of BA/BS	December 2011
JD/LLB From	The University of Chicago Law School
	https://www.law.uchicago.edu/
Date of JD/LLB	June 1, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	The University of Chicago Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
--------------------------------------	-----

Post-graduate Judicial Law Clerk **Yes**

Specialized Work Experience

Recommenders

Morse, Michael
michaelmorse@uchicago.edu

Leiter, Brian
bleiter@uchicago.edu
773-702-0953

Rappaport, John
jrappaport@uchicago.edu
773-834-7194

This applicant has certified that all data entered in this profile and any application documents are true and correct.

6127 S. Woodlawn Ave., Apt. A
Chicago, IL 60637
248-982-2915
blanchardwu@uchicago.edu

June 12, 2023

The Honorable John M. Walker, Jr.
U.S. Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510

Dear Judge Walker:

I am a rising 3L at the University of Chicago Law School and a member of the *Law Review*, and I am applying for a clerkship in your chambers. I will be clerking for the Honorable Leonie M. Brinkema on the Eastern District of Virginia during the 2024-2025 term, and I am interested in clerking for you during the 2025-2026 term. I plan to begin my legal career as a litigator—ideally in a criminal division of the Department of Justice—so I am particularly interested in clerking on the Second Circuit.

Through my academic coursework, I developed detailed and thorough research and writing skills. I won UChicago's 1L Bigelow Moot Court competition by writing the best appellate brief in my section. Last fall, my article discussing the constitutionality of victims' rights ballot initiatives was published in the *University of Chicago Law Review Online*. For my master's thesis I developed a study that explored an under-researched area of music education.

As an intern for The Honorable Florence Y. Pan on the D.D.C. (now on the D.C. Circuit), I researched an unfamiliar area of law, synthesized a bifurcated record into a concise memorandum, and drafted a judicial opinion. I also extended my internship to observe a major antitrust trial. In the Federal Public Defender Program, I drafted portions of appellate briefs, sentencing memoranda, a suppression motion, and motions to terminate supervised release. I also helped moot my supervisor prior to oral argument before the Seventh Circuit. In addition to research and writing, I have nearly a decade of experience as a teacher and music program director managing dozens of overlapping administrative, logistical, and substantive responsibilities.

A resume, transcript, and writing sample are enclosed. Letters of recommendation from Professors Rappaport, Leiter, and Morse will arrive under separate cover. Additionally, Judge Pan has agreed to serve as a reference and would be happy to speak with you regarding my work in her chambers last summer. Should you require additional information, please do not hesitate to let me know.

Sincerely,
/s/ Evan Blanchard-Wu

Evan Blanchard-Wu
Enclosures

Evan Blanchard-Wu

6127 S. Woodlawn Ave., Apt. A, Chicago, IL 60637
blanchardwu@uchicago.edu | (248) 982-2915

EDUCATION

The University of Chicago Law School, Chicago, IL, *Candidate for J.D.*, expected June 2024

- Honors: Sidley Austin Prize for Excellence in Brief Writing; Edmund A. Spencer Scholar; *The University of Chicago Law Review*
- Publication: “A Right to Reasonable Protection Under Marsy’s Laws,” *University of Chicago Law Review Online*
- Activities: American Constitution Society; International Law Society; Supreme Court Appellate Society

University of Michigan, Ann Arbor, MI, *M.M. in Music Education*, Aug. 2017

- Thesis: Rehearsal Interactions of Middle School Chamber Music Ensembles: A quantitative-descriptive study of collaborative learning and the impact of coaching

University of Michigan, Ann Arbor, MI, *B.A. in Music Education, With Highest Honors*, Dec. 2011

- Honors: LSA Alumni Scholarship; Michigan Competitive Scholarship; University Honors
- Activities: InterVarsity Christian Fellowship, *President*; Fischhoff National Chamber Music Competition, *Quarterfinalist*

EXPERIENCE

The Honorable Leonie M. Brinkema, U.S. District Court for the Eastern District of Virginia, Alexandria, VA, *Judicial Law Clerk*, Aug. 2024–Aug. 2025

Latham & Watkins, Washington, D.C., *Summer Associate*, Summer 2023

Federal Public Defender for the Northern District of Illinois, Chicago, IL, *Intern*, Jan.–May 2022

- Drafted motions, including motions to terminate supervised release and a motion to suppress
- Conducted legal research on issues including Hobbs Act robbery and attempts as crimes of violence
- Observed and assisted in client meetings and court hearings

Professor John Rappaport, The University of Chicago Law School, Chicago, IL, *Research Assistant*, Summer 2022

- Found caselaw and secondary sources for a criminal law casebook, researched labor market mobility

The Honorable Florence Y. Pan, U.S. District Court for the District of Columbia, Washington, D.C., *Judicial Intern*, Summer 2022

- Conducted legal research, wrote legal memoranda, and drafted a judicial opinion

District of Columbia Public Schools, Washington, D.C., *Music Teacher*, Aug. 2018–June 2021

- Created and taught music curriculum for 300+ students in a Title I school, resulting in the most successful concert in 40 years according to staff and parent survey feedback
- Led school-wide discipline reform and piloted new classroom structures, resulting in improved parent perceptions of school culture according to survey data
- Organized and led free, after-school D.C. Youth Orchestra Program for 20 students annually

BOSCO, Bangalore, India, *Volunteer*, March–June 2018

- Tutored 25 children at NGO working with runaway youth; edited case reports

Beijing No. 35 High School, Beijing, China, *English and Music Teacher*, Aug. 2017–Feb. 2018

Novi Community Schools, Novi, MI, *Middle School Band Director*, Aug. 2012–June 2017

- Started robust community engagement program, inviting 25 professional musicians to teach students

Languages: French (Proficient/B2); Mandarin (Basic/HSK 2)



Name: **Evan Mark Blanchard-Wu**
Student ID: **12329148**

Scott C. Campbell, University Registrar

University of Chicago Law School

Spring 2022

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Program Status: Active in Program
J.D. in Law

External Education

University of Michigan-Ann Arbor
Ann Arbor, Michigan
Bachelor of Arts 2011

University of Michigan-Ann Arbor
Ann Arbor, Michigan
Master of Arts 2017

Course	Description	Attempted	Earned	Grade
LAWS 30712	Legal Research, Writing, and Advocacy Michael Morse	2	2	184
LAWS 30713	Transactional Lawyering Douglas Baird	3	3	177
LAWS 44201	Legislation and Statutory Interpretation Ryan Doerfler	3	3	179
LAWS 47201	Criminal Procedure I: The Investigative Process John Rappaport	3	3	179
LAWS 47411	Jurisprudence I: Theories of Law and Adjudication Brian Leiter	3	3	182

Honors/Awards

The Sidley Austin Prize, for excellence in Brief Writing in the Bigelow Moot Court Competition

Summer 2022

Honors/Awards

The University of Chicago Law Review, Staff Member 2022-23

Autumn 2022

Beginning of Law School Record

Autumn 2021

Course	Description	Attempted	Earned	Grade
LAWS 30101	Elements of the Law Lior Strahilevitz	3	3	178
LAWS 30211	Civil Procedure Emily Buss	4	4	180
LAWS 30611	Torts Saul Levmore	4	4	181
LAWS 30711	Legal Research and Writing Michael Morse	1	1	181

Course	Description	Attempted	Earned	Grade
LAWS 42301	Business Organizations Anthony Casey	3	3	184
LAWS 43200	Immigration Law Amber Hallett	3	3	179
LAWS 50311	U.S. Supreme Court: Theory and Practice Req Meets Writing Project Requirement Designation: Sarah Konsky Michael Scodro	3	3	183
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P

Winter 2022

Course	Description	Attempted	Earned	Grade
LAWS 30311	Criminal Law Sonja Starr	4	4	179
LAWS 30411	Property Lee Fennell	4	4	178
LAWS 30511	Contracts Eric Posner	4	4	180
LAWS 30711	Legal Research and Writing Michael Morse	1	1	181

Winter 2023

Course	Description	Attempted	Earned	Grade
LAWS 40101	Constitutional Law I: Governmental Structure David A Strauss	3	3	180
LAWS 46101	Administrative Law David A Strauss	3	3	183
LAWS 91201	Prosecution and Defense Clinic Lisa Noller Molly Armour	4	4	180
LAWS 94110	The University of Chicago Law Review Anthony Casey	1	1	P

Date Issued: 05/30/2023

Page 1 of 2



Name: Evan Mark Blanchard-Wu
Student ID: 12329148

Scott C. Campbell, University Registrar

University of Chicago Law School

Spring 2023

Course	Description	Attempted	Earned	Grade
LAWS 41601	Evidence John Rappaport	3	3	182
LAWS 43218	Public Choice and Law Saul Levmore	3	3	180
LAWS 53480	Advanced Jurisprudence Kevin Toh	3	0	
LAWS 91201	Prosecution and Defense Clinic Lisa Noller Molly Armour	3	3	180
LAWS 94110	The University of Chicago Law Review Meets Substantial Research Paper Requirement	1	1	P

Req

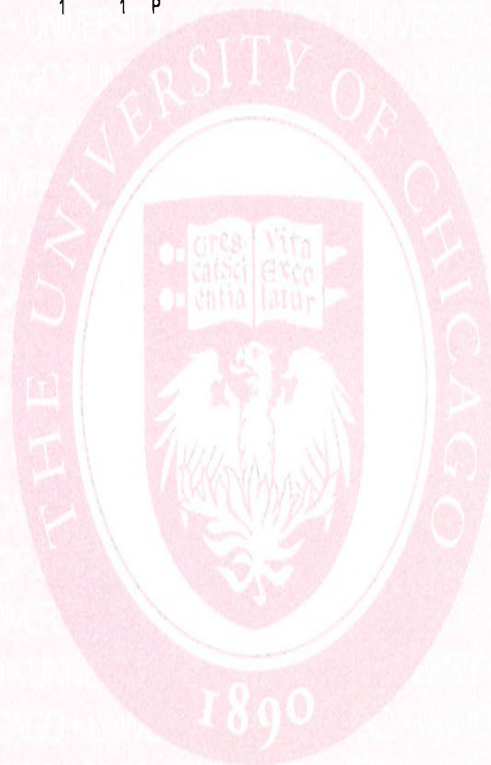
Designation:

Anthony Casey

Send To:

Evan Blanchard-Wu
6127 S Woodlawn Avenue
Chicago, IL
60637

End of University of Chicago Law School



Date Issued: 05/30/2023

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OFFICIAL ACADEMIC DOCUMENT

THE UNIVERSITY OF
CHICAGOKey to Transcripts
of
Academic Records

1. **Accreditation:** The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit <http://csl.uchicago.edu/policies/disclosures>.

2. **Calendar & Status:** The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. **Course Information:** Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. **Credits:** The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP **Pass (non-Law):** Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR **No Grade Reported:** No final grade submitted
- P **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q **Query:** No final grade submitted (College only)
- R **Registered:** Registered to audit the course
- S **Satisfactory**
- U **Unsatisfactory**
- UW **Unofficial Withdrawal**
- W **Withdrawal:** Does not affect GPA calculation
- WP **Withdrawal Passing:** Does not affect GPA calculation
- WF **Withdrawal Failing:** Does not affect GPA calculation
- Blank:** If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H Honors Quality
- P* High Pass
- P Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

6. **Academic Status and Program of Study:** The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. **Doctoral Residence Status:** Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a

University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled *Pro Forma* does not extend the maximum year limit on registration.

8. **Law School Transcript Key:** The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. **FERPA Re-Disclosure Notice:** In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website: <http://registrar.uchicago.edu>.

Revised 09/2016



Transcripts, Certification and Diploma Department

1210 LSA Building
500 S. State Street
Ann Arbor, MI 48109-1382
Phone: 734-763-9066 Fax: 734-764-5556
ro.umich.edu

University of Michigan Statement of Authenticity

Transcript of: Evan M Blanchard

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Academic Transcript of: **BLANCHARD, EVAN M**
STUDENT NAME

57004006
STUDENT ID NUMBER

E163286001-1
CONTROL NUMBER

02-May-2018
DATE ISSUED

Page 1

3224317564
STATE OF MICHIGAN UIC

UNIVERSITY OF MICHIGAN

OFFICE OF THE REGISTRAR - ANN ARBOR, MI 48109-1382



Paul Robinson
University Registrar

UNIVERSITY OF MICHIGAN DEGREES AWARDED

School/College:	Music, Theatre & Dance	Fall 2007	Undergraduate LS & A	Grade	Hours	MSH	CTP	MHP
Major:	Music Education	ANTHRCL 101	Intro Anthro	A-	4.00	4.00	4.00	14.80
Track:	Saxophone	RCCORE 100	First Year Sem	A	4.00	4.00	4.00	16.00
Degree:	Bachelor of Music, With Highest Honors	RCLANG 290	Philosophy	P	8.00	0.00	8.00	0.00
Awarded:	22-DEC-2011	THEORY 139	Intens French	A-	1.00	1.00	1.00	3.70
			Bmus Aural Sk I					
		Term Total	GPA: 3.833		17.00	9.00	17.00	34.50

School/College:	Music, Theatre & Dance	Winter 2008	Undergraduate LS & A	Grade	Hours	MSH	CTP	MHP
Field(s) of Specialization:	Music Education	ENS 346	Campus Band DCO	A+	1.00	0.00	1.00	0.00
	Saxophone	MUSICOL 140	Hist of Mus	A	2.00	2.00	2.00	8.00
Degree:	Master of Music	PSYCH 111	Intro Psych	A-	4.00	4.00	4.00	14.80
Awarded:	18-AUG-2017	RCLANG 320	Sem-Francais	A-	4.00	4.00	4.00	14.80
			Existentialism: Human Condition and the Absurd					
		SAX 150	Performance	A+	2.00	2.00	2.00	8.00
		STATS 350	Intr Stat&Data Anlys	A-	4.00	4.00	4.00	14.80
		Term Total	GPA: 3.775		17.00	16.00	17.00	60.40

NON-UNIVERSITY OF MICHIGAN ACADEMIC EXPERIENCE

ADVANCED PLACEMENT AND EXAMINATION CREDIT

CREDITS

ENGLISH	101X	Departmental	3.00	Undergraduate LS & A				
HISTORY	102X	Departmental	4.00	Cumulative Total	GPA: 3.796	25.00	45.00	94.90
STATS	101X	Departmental	4.00					

BEGINNING OF UNDERGRADUATE RECORD

Transfer Course Credit Accepted towards

Undergraduate LS & A

MSH CTP MHP
0.00 11.00 0.00

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Academic Transcript of: BLANCHARD, EVAN M
STUDENT NAME

57004006

STUDENT ID NUMBER

E163286001-1

CONTROL NUMBER

02-May-2018

DATE ISSUED

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STATE OF MICHIGAN UIC

UNIVERSITY OF MICHIGAN

OFFICE OF THE REGISTRAR - ANN ARBOR, MI 48109-1382



University Registrar

Transfer Course Credit Accepted towards

Undergrad Music, Thre & Dance

MSH CTP MHP

Fall 2009

Undergrad Music, Thre & Dance

Grade Hours MSH CTP MHP

Fall 2008

Undergrad Music, Thre & Dance

Grade Hours MSH CTP MHP

Fall 2009

Undergrad Music, Thre & Dance

Grade Hours MSH CTP MHP

ENS	347	Univ Band	A	2.00	2.00	2.00	8.00
MUSED	201	Tch Str Instr I	B	1.00	1.00	1.00	3.00
MUSED	203	Tch Woodwind Instr	A	1.00	1.00	1.00	4.00
MUSICOL	239	Hist of Mus	A	2.00	2.00	2.00	8.00
PIANO	111	Performance	A	2.00	2.00	2.00	8.00
SAX	139	Performance	A	4.00	4.00	4.00	16.00
THEORY	149	Bmus Wrtg Sk I	A	2.00	2.00	2.00	8.00
Term Total				14.00	14.00	14.00	55.00

GPA: 3.928

Term Total

GPA: 3.927

18.00 18.00 18.00 70.70

Winter 2009

Undergrad Music, Thre & Dance

Grade Hours MSH CTP MHP

Winter 2010

Undergrad Music, Thre & Dance

Grade Hours MSH CTP MHP

ENS	347	Univ Band	A	2.00	2.00	2.00	8.00
ENS	461	Small Woodwind Ens	A	1.00	1.00	1.00	4.00
FRENCH	270	Lit & Culture	A	3.00	3.00	3.00	11.10
		Justice et moralite					
MUSED	202	Tch Str Instr II	C	1.00	1.00	1.00	2.00
MUSED	205	Tch Brass Instr	A	1.00	1.00	1.00	4.00
MUSED	207	Tch Percuss Instr	A	1.00	1.00	1.00	4.00
MUSICOL	240	Hist of Mus	B	2.00	2.00	2.00	6.00
SAX	222	Performance	A	4.00	4.00	4.00	16.00
THEORY	140	Bmus Aurl Sk II	A	1.00	1.00	1.00	4.00
THEORY	150	Bmus Wrtg Sk II	A	2.00	2.00	2.00	8.00
Term Total				18.00	18.00	18.00	67.10

GPA: 3.727

Term Total

GPA: 3.918

16.00 16.00 16.00 62.70

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3224317564
STATE OF MICHIGAN UIC

UNIVERSITY OF MICHIGAN

OFFICE OF THE REGISTRAR - ANN ARBOR, MI 48109-1382

Paul Robinson
University Registrar

BEGINNING OF GRADUATE RECORD

Summer 2017

Graduate Music, Thtre & Dance

Grade

Hours

MSH

CTP

MHP

CONDUCT

507

Special Projects

A

2.00

2.00

2.00

8.00

Band Conducting & Pedagogy

MUSED

504

Special Course

A

3.00

3.00

3.00

12.00

Intro to Improv/Comp/Arranging

THEORY

560

Special Studies

A

3.00

3.00

3.00

12.00

Gender&Sexual Identity Pop Mus

Term Total

GPA: 4.000

8.00

8.00

8.00

32.00

Cumulative Total

GPA: 4.000

30.00

32.00

122.70

END OF GRADUATE RECORD

Summer 2015

Graduate Music, Thtre & Dance

Grade

Hours

MSH

CTP

MHP

MUSED

407

Special Courses

A

1.00

1.00

1.00

4.00

Music Theory Review

MUSED

500

Res Design in Mus Ed

A+

3.00

3.00

3.00

12.90

MUSED

503

Mus Curric&Assessmnt

A+

3.00

3.00

3.00

12.90

MUSED

505

Special Topics

A

2.00

2.00

2.00

8.00

Jazz Improvisation

MUSED

505

Special Topics

A

2.00

2.00

2.00

8.00

Experiencing Music Composition

MUSED

509

Spec Proj&Readings

A

1.00

1.00

1.00

4.00

Term Total

GPA: 4.000

12.00

12.00

12.00

49.80

Summer 2016

Graduate Music, Thtre & Dance

Grade

Hours

MSH

CTP

MHP

MUSED

501

Psy of Mus Teach&Lm

A+

3.00

3.00

3.00

12.90

MUSED

502

Hist&Philos of MusEd

A

3.00

3.00

3.00

12.00

MUSED

505

Special Topics

A

2.00

2.00

2.00

8.00

Jazz Practice & Pedagogy

MUSED

505

Special Topics

A

2.00

2.00

2.00

8.00

Project Teach & Learn w/ Tech

MUSED

516

Mus Ed Final Pres

P

2.00

0.00

2.00

0.00

Term Total

GPA: 4.000

12.00

10.00

12.00

40.90

Fall 2007

RCCORE 100

First Year Sem

Cohen, Carl

This seminar aims to introduce students to a wide range of philosophical ideas and approaches: from the classical writings of Kant and Marx, to the reflections of mathematicians and scientists, including also classical arguments in political theory and penology. Some Supreme Court opinions, some current university controversies of a philosophical nature, and some intellectual autobiography are also read and written about. The aims throughout are to expand intellectual horizons, to foster thoughtful argument, and to encourage critical writing that is balanced and accurate.

Continued next page >

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Academic Transcript of: BLANCHARD, EVAN M
STUDENT NAME

57004006

STUDENT ID NUMBER

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Page 5

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UNIVERSITY OF MICHIGAN

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Paul R. Johnson
University Registrar

Evan Blanchard did work in this course that was nothing less than splendid, truly outstanding. This seminar group was particularly strong, and among these very able students he stood out. I think myself fortunate to have had him as my student. The books we worked with were very demanding. Evan reads complex philosophical arguments with deep understanding, and writes about them with remarkable wisdom for one of his years. He is at times critical, sometimes sharply critical - but always with delicacy and with care. I was invariably impressed, both in his papers and in his oral commentary, by his restraint, and by his balance of mind. These virtues are manifest also in the excellence of his writing, whose quality is far higher than that normally encountered in undergraduate work. His papers are accurate in every detail. More than that, they are composed with a clear grasp of what he seeks to accomplish, and how, in limited space, he can accomplish those goals. Remarkable. And a great pleasure. In our seminar arguments his papers were often the focus of group concern, and in defending them he was invariably constructive in every way, patient and good-humored, sometimes eloquent. I loved having him in class.

There is no doubt in my mind: Evan is destined for a superb intellectual career. Course grade: A

Fall 2007 RCLANG 290 Intens French

Butler-Borruat, Dominique M

French 290 is a second-year intensive course designed to bring students to proficiency level in all four communication skills: speaking, oral comprehension, reading comprehension, and writing.

Evan enjoyed an excellent semester. He came to French 290 with a solid background, and took advantage of every opportunity to expand his knowledge. His attendance record, both in class and at the co-curricular activities (French table and conversation club), was good. He complied without difficulty with the demands of the course, turning in all assignments and coming prepared to class. A dynamic student, he was a frequent and enthusiastic contributor to class discussions. His pertinent comments attested to his already well-developed intellectual maturity. His good sense of humor was much appreciated. His high test scores indicate an excellent command of formal grammar, which he is able to apply to his writing.

His written work demonstrates good fluidity, style, and a willingness to take risks. In speaking, he expresses himself with appreciable fluidity, ease and accuracy. His pronunciation is satisfactory. Both his reading and listening skills are finely tuned: he can grasp fine nuances of a text or a lecture. His very high scores on the Proficiency Exam confirm that he is well prepared for his next French class. A fine performance from a student who was a pleasure to have in class.

Winter 2008 RCLANG 320 Sem-Francais

Butler-Borruat, Dominique M

Existentialism: The Human Condition and the Absurd. In this seminar, students were exposed to French existentialism through the reading and studying of plays, essays and short stories by Jean-Paul Sartre, Albert Camus and Simone de Beauvoir. The objectives of this course were for students to develop an appreciation of this philosophical current as well as to formulate a position concerning its main themes. Students wrote five papers and were required to actively participate in class discussion. Evan enjoyed a very good semester. With perfect class attendance and expected participation in co-curricular activities, he turned in all his assignments in a timely manner and was thoroughly prepared for class. Actively engaged in group settings, he was a very frequent contributor to class discussions, offering pertinent remarks which were indicative of him having reflected on the material during his preparatory work. In addition, Evan never shied away from questioning the concepts at hand, but was always very respectful of his classmates' views diverging from his own. He developed a very thorough understanding of the concepts studied, which he was able to synthesize in a very clear and concise manner. His written work was overall well structured, but he needs to pay more attention to his introductory paragraph. In his essays, he demonstrated that he is able to successfully follow through on a demonstration, and his well-developed analytical and critical skills highlighted elements which reached beyond the scope of our class discussions. He is also an attentive reader, who integrates judiciously chosen quotations to support his views. His thorough and well-crafted last essay confirmed that he engaged with the material on a very personal level and can justify his position with an extremely solid line of argumentation, using many pertinent examples to illustrate his claims. In spoken and written French, Evan expresses himself with fluidity and desirable accuracy, although some mistakes persist, some of which he is able to self-correct. A fine performance from a student whose contributions were very valuable to the class.

End of Transcript

Total Number of Pages 5

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TRANSCRIPT GUIDE

DEFINITION OF AN OFFICIAL TRANSCRIPT

An Official Transcript is one that has been received directly from the issuing institution. It must bear the University seal, date and signature of the registrar. Transcripts received that do not meet these requirements should not be considered official and should be routinely rejected for any permanent use. This definition of an official transcript has been endorsed by the Michigan Association of Collegiate Registrars and Admissions Officers.

ACCREDITATION

The three campuses of the University of Michigan are accredited by the North Central Association of Colleges and Schools - Higher Learning Commission. Many of the departments and programs within the University are also accredited by various agencies. Detailed information about these agencies and the accreditation process is available from the Dean's office of each academic unit.

CALENDAR

The University of Michigan operates under the trimester calendar. A unit of credit is a semester hour.

ELIGIBILITY FOR ENROLLMENT

Unless otherwise indicated, a student is eligible to enroll.

EXPLANATION OF COLUMN HEADINGS

HRS = Elected Hours/Units; MSH = GPA Semester Hours; CTP = Credit Toward Program; MHP = GPA Honor Points.

ABBREVIATIONS FOR CREDIT CONDITIONS

AGC = Approved for Graduate Credit; CBE = Credit by Exam; DCO = Degree Credit Only; NDC = Not for Undergraduate degree credit; NFC = Not for Credit; NGD = Not for Graduate Degree Credit; REP = Repetition.

STUDY ABROAD

Study abroad credit is considered upper level unless otherwise noted.

LETTER GRADES

9.0 GRADING SCALE (A+ through B = Pass unless otherwise noted)

A+ = 9.0; A = 8.0; A- = 7.0; B+ = 6.0; B = 5.0; B- = 4.0; C+ = 3.0; C = 2.0; C- = 1.0; D+ = 0.0; D = 0.0; D- = 0.0; E = 0.0.

4.4 GRADING SCALE

A+ = 4.4; A = 4.0; A- = 3.7; B+ = 3.4; B = 3.0; B- = 2.7; C+ = 2.4; C = 2.0; C- = 1.7; D+ = 1.4; D = 1.0; D- = 0.7; E = 0.0.

4.3 GRADING SCALE

A+ = 4.3; A = 4.0; A- = 3.7; B+ = 3.3; B = 3.0; B- = 2.7; C+ = 2.3; C = 2.0; C- = 1.7; D+ = 1.3; D = 1.0; D- = 0.7; E = 0.0.

4.0 GRADING SCALE

A+ = 4.0; A = 4.0; A- = 3.7; B+ = 3.3; B = 3.0; B- = 2.7; C+ = 2.3; C = 2.0; C- = 1.7; D+ = 1.3; D = 1.0; D- = 0.7; E = 0.0.

ADDITIONAL GRADES

EX = EXCELLENT; GD = GOOD; PS = PASS; LP = LOW PASS; F = FAIL (EX, GD, PS and LP = Pass)

CR = Credit; NC = No credit; S = Satisfactory; U = Unsatisfactory; P = Pass; F = Fail;

I = Incomplete (I OR IL followed by a letter grade indicates an initial incomplete that has been given a final grade.); NR = No grade reported;

= Grade not submitted; ED = Unofficial drop; VI = Audit or Visit; W = Withdrew from course; Y = Extended multi-term class

M = Marginal; IPL = Incomplete Permanent Lapse

COMPUTATIONS FOR TERM OR CUMULATIVE GPA: Term GPA = Term MHP/Term MSH; Cumulative GPA = Cumulative MHP/Cumulative MSH; Example: 42.0 MHP/12.0 MSH = 3.5 GPA.

Michael Morse
Harry A. Bigelow Teaching Fellow, Lecturer in Law
The University of Chicago Law School
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June 09, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am writing on behalf of Evan Blanchard-Wu to strongly support his application to become your law clerk. Evan is one of the very best students I've taught at the University of Chicago Law School. Having recently clerked for Judge Myron Thompson and Judge Marsha Berzon, I am confident Evan will excel in chambers. Evan has the maturity of a student who taught for a decade prior to entering law school and a terrific writing ability. Further, I believe his interest in public defense makes him a particularly terrific fit for your chambers.

I have gotten to know Evan well during his first two years at Chicago, where I am a Harry A. Bigelow Teaching Fellow. As part of the Bigelow program, I teach thirty-five students legal research and writing twice a week for the entire academic year. During the year-long course, Evan was a frequent and welcome participant in class discussion. Drawing on his background as a teacher and his experience with graduate-level coursework, Evan emerged one of the very strongest writers in the class. At the end of the year, I awarded him the Sidley Austin Prize as the "student ... whose ... rief was judged to be most outstanding."

Evan has continued to improve his outstanding writing ability as a member of the law review. I've been thoroughly impressed in my discussions with him about his Note, "Non-Corrupt Obstruction of Justice," which focuses on the January 6 insurrection. The Note critically analyzes felony obstruction of an official proceeding, 18 U.S.C. § 1512(c)(2), and concludes that the statute is constitutional but inapplicable to the January 6 defendants. Evan's Note reflects the careful work I would expect of a law clerk.

Beyond his academic accomplishments, Evan is a terrific person who wants to contribute to his community. He is a generous and empathetic student, respected by his classmates. During office hours and morning breakfasts, Evan and I have talked about many things. One thing that brings me a smile is hearing about his family: Evan is married and has a young child. Another is his passion for music teaching. After Evan auditioned into the University of Michigan saxophone studio, he taught for a decade in Washington, D.C. Evan and I have also spoken at length about his goals of pursuing a public interest career and contributing to a more equitable criminal legal system.

Evan sees himself working in public service in Washington, D.C. I think a clerkship in your chambers would be a tremendous opportunity for Evan to establish himself as a public interest lawyer. I sincerely hope you consider him for a clerkship. I would be delighted to talk about Evan at any time. My cell phone is 954-558-7989.

Sincerely,
Michael Morse

Michael Morse - michaelmorse@uchicago.edu

Professor Brian Leiter
Karl N. Llewellyn Professor of Jurisprudence
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May 25, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am very pleased to write in strong support of Evan Blanchard-Wu, who has applied for a clerkship in your chambers. He will be a very good clerk.

I had Mr. Blanchard-Wu in my Jurisprudence I class, an elective in the Spring quarter of his first year at the Law School (Spring 2022). The Jurisprudence class covers a range of issues about the nature of law, the relationship between law and morality, and the theory of adjudication, the theory of how judges do decide cases and how they ought to decide them. The readings are drawn from O.W. Holmes, Karl Llewellyn, H.L.A. Hart, Ronald Dworkin, and Joseph Raz, among other important jurisprudential writers; the emphasis throughout is on detailed, critical analysis of the arguments advanced. The eight-hour take-home essay exam in Jurisprudence tests the student's understanding of the positions and arguments.

The exam last year presented the students with Raz's formulation of the "age old question" "whether it is ever the case that a rule is a rule of law because it is morally binding, and whether a rule can ever fail to be legally binding on the ground that it is morally unacceptable." Students were then asked to explain how three authors—Hart, Dworkin, and a contemporary natural law theorist Mark Murphy—would answer that question. One challenge for the students here was to discuss only those aspects of the views of these legal philosophers that were actually relevant to the Razian formulation of the question; this required subtle judgment about the details of their arguments, especially given the strict word limitation on the answer.

Mr. Blanchard-Wu wrote one of the six best exams in a class of 33 students. (I should note that several of the students who got higher scores on the exam had more substantial backgrounds in philosophy—one had a PhD, another an MA, for example—while Mr. Blanchard-Wu had never taken any philosophy previously.) He explained clearly why Hart's answer to the question was, to oversimplify, "no," and Dworkin's answer was "yes." The most challenging part of the exam for the students, however, was Murphy's view. According to Murphy, law is the kind of institution that, when working properly, makes morally reasonable demands on action, but at the same time, he allows that many actual laws are, as it were, "defective" instances of the kind of institution law is (that is, particular laws may be immoral or unreasonable). Mr. Blanchard-Wu explained, correctly, that Murphy has a much more complex answer to the "age-old question."

Mr. Blanchard-Wu wrote an "A" exam (a 181 on our scale), but he was also one of just four students who received extra credit for the high quality and quantity of his class participation (hence his 182 in this class). This was all the more notable given that, as I mentioned above, he had never before taken a philosophy class, let alone one on the philosophy of law. His questions and comments in class were, however, consistently excellent: he regularly identified the central issue in a dialectic, or the weakness in an argument. He was a pleasure to have in class.

I have taught the Jurisprudence course in one form or another for almost thirty years, first at the University of Texas, for one year at Yale, and, since 2008, at Chicago. The best students in this class have gone on to perform successfully in the most competitive and demanding federal clerkships, at both the district and appellate levels. Mr. Blanchard-Wu is clearly competitive with his predecessors: based on his exam and class participation, I would put him in roughly the top 20% of this strong group now comprising several dozen clerks for federal judges. Indeed, one student from the same class has already accepted a clerkship with Judge Rao on the D.C. Circuit; this student also wrote a very good exam, earning the same grade as Mr. Blanchard-Wu, although she did not get extra credit for participation.

I should say a word about our somewhat baroque grading system. 177 is the median (roughly a B+), and there is a strict limit on grades over 180 (180-186 is the "A" range), but the reality is we almost never give grades higher than 184 (I have done so only twice in fourteen years). Based on his academic record so far, Mr. Blanchard-Wu is easily on track to graduate with honors and may make Order of the Coif.

Mr. Blanchard-Wu is an unusually mature student, who has taught in the public schools, and in China and India, for a decade before coming to law school. His performance his first year in law school was all the more notable to me when I learned he and his wife had a one-year-old at home that year. He also often came to my office hours, and I was always struck by his professionalism and courtesy, as well as his intelligent questions. I was not surprised to learn he made the Law Review given his performance in my class.

Brian Leiter - bleiter@uchicago.edu - 773-702-0953

Mr. Blanchard-Wu is committed to a career in public service, perhaps with the government. He has a particular interest in criminal law, but as his transcript reveals he has excelled in many different subjects, from business organizations to torts. He is also a very good writer, as both his exam for me and his Sidley Austin Prize for brief writing in the moot court competition demonstrate. I am sure he will do very good work for you, and you will find him a congenial presence in your chambers.

Sincerely yours,
Brian Leiter

John Rappaport
Professor of Law
The University of Chicago Law School
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May 25, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

Evan Blanchard-Wu is an unusually mature and worldly clerkship candidate. He is, to be clear, also enormously bright—a skilled researcher, legal analyst, and writer. But so are many of his peers. Evan, though, is the only one who made his way through 1L year while raising a child, pocketing the Sidley Austin Prize for writing the best appellate brief in his section of Legal Research and Writing and competing his way onto the Law School's flagship law review. Evan is also the only one, I would wager, who came to Chicago with a decade of public-school-teaching experience, including three years in the D.C. public schools. In Evan, you will find a resourceful, steady, and capable law clerk. I recommend him to you without the slightest hesitation.

Evan first came into my orbit when he applied for a part-time summer research-assistant position I posted last winter. I have soft spots for both musicians and Michiganders, but what clinched it for Evan was the good word of his Bigelow Fellow (and Legal Research and Writing instructor) Michael Morse, himself a massively impressive intellect with tenure-track job offers from the University of Pennsylvania and Duke. I then had Evan as a student in Criminal Procedure between the time I hired him and the commencement of his work for me. Evan was an excellent student—calm, collected, and commonsensical during our Socratic exchanges. His age and maturity shone through brightly in class and office hours. His curiosity too—unlike some of his younger peers, who were (understandably) fixated on preparing optimally for the exam, Evan seemed deeply and genuinely interested in making sense of the law and its relationship to the society it governs. Evan did well on the exam—earning a 179, the highest B+—but frankly I thought he'd do better. But I wasn't worried.

Sure enough, Evan's work as an RA was excellent. I'm coauthoring a first-edition Criminal Law casebook with Andrew Crespo at Harvard and we asked for Evan's help on one of the most important and sensitive topics in the book: the history of race and rape prosecutions. Evan's work was exceedingly thorough and clearly presented. He canvassed over 30 secondary sources to dig up material documenting the ways in which rape law has been used as a tool of racial oppression while simultaneously leaving Black women underprotected. Evan handled the subject delicately and professionally.

Evan did such fine work that, even though his time with me had technically ended, I called on him recently to help with a law review article about lateral mobility in the market for police officer labor. The thrust of the paper is that lateral labor mobility among police officers is quite low, and that this fact is intimately connected with problems of police malfeasance. My coauthors and I established the first point through original empirical analysis, but we were finding it surprisingly difficult to locate information about lateral mobility in other occupations for comparison. We consulted multiple labor economists and law librarians, but no one suggested anything particularly pertinent. Evan did what the others couldn't. He unearthed, among other things, a report from the U.S. Department of Education's National Center for Education Statistics that contained precisely the comparative data we needed. The memo he prepared, moreover, was succinct and direct. Nearly everything Evan sent us ended up somewhere in our manuscript. The paper is substantially better for Evan's input.

Evan aspires to a career of public service, ideally in the federal government. I see no reason he won't reach this goal. Before then, he'll be a terrific law clerk to a lucky federal judge. I hope you'll give Evan's application the most serious consideration. I am always available to answer any questions you might have or to sing Evan's praises some more.

Sincerely,

John Rappaport

John Rappaport - jrapppaport@uchicago.edu - 773-834-7194

Evan Blanchard-Wu

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Writing Sample

I prepared the attached writing sample for my Legal Research & Writing class at the University of Chicago Law School. In this assignment, I was asked to write a brief for defendant-appellee Davidson Datavault, LLC on a fictional Article III standing claim in the Seventh Circuit without having read the appellant's brief. To create a 10-page writing sample, I omitted the cover page, table of contents, table of authorities, statement of jurisdiction, statement of the case, and conclusion. I received no feedback or editing from my professor or anyone else on this piece.

Factual background:

In this fictional case, defendant-appellee Datavault is a data storage company with 10,000 customers. Plaintiff-appellant Danny Midway runs a small apparel business. Midway stored his business records, online usernames and passwords, personally identifying information, and bank account and credit card information on his Datavault account. Datavault suffered a data breach in which all customers' data (name, social security number, credit card information, etc.) was potentially taken, but no customer had experienced identity theft or fraudulent transactions by the time of the litigation. In response, Midway cancelled his credit card, froze his credit, and shut down his business for two months. He then applied for a new credit card and renewed his business. Midway also suffered insomnia and anxiety, which he attributed to the breach.

STATEMENT OF THE ISSUES

Between September 1 and October 1, 2020, hackers attacked data storage company Davidson Datavault, LLC and downloaded limited personal information and encrypted files belonging to each user, including Danny Midway. Midway sued Datavault in federal court, alleging three injuries: risk of future injury, emotional distress, and mitigation costs. The district court dismissed Midway’s complaint for lack of Article III standing.

1. Whether Midway’s alleged injuries—which do not include any allegations of actual fraudulent activity against any of Datavault’s 10,000 customers—constitute injuries in fact for standing purposes.
2. Whether Midway’s emotional distress and mitigation costs—both closely linked to Midway’s choice not to replace his sole credit card—are traceable to Datavault.

STATEMENT OF THE CASE

[Omitted for space considerations]

SUMMARY OF THE ARGUMENT

Danny Midway alleges that he suffered three injuries in fact after Davidson Datavault, LLC was victimized by a data breach, but he does not meet his burden of demonstrating that these injuries were each (1) concrete and (2) actual or imminent. In addition, Midway does not plead facts sufficient to conclude that two of the alleged injuries were likely traceable to Datavault’s conduct. Importantly, Midways seeks a damages remedy for all three alleged injuries.

Midway’s core claim is that he suffered a concrete risk of future identity theft and credit fraud. The Supreme Court foreclosed this claim when it held in *TransUnion L.L.C. v. Ramirez*

that “in a suit for damages, the mere risk of future harm, standing alone, cannot qualify as a concrete harm” 141 S. Ct. 2190, 2210–11 (2021).

The harms Midway allegedly risks are also not sufficiently imminent to establish standing. Notably, Midway provided zero evidence of identity theft or fraud for himself or any of the 10,000 affected Datavault customers over a five-to-six-month span. No Seventh Circuit or Supreme Court decisions have found standing under such uneventful circumstances.

Midway’s alleged emotional distress is not concrete for the simple reason that Seventh Circuit courts have repeatedly stated that feelings like “worry,” “stress,” “confusion,” etc. are not concrete injuries for standing purposes. *See, e.g., Pierre v. Midland Credit Mgmt., Inc.*, 29 F.4th 934, 939 (7th Cir. 2022) (“[W]orry, like confusion, is insufficient to confer standing.”). Furthermore, allowing such “harms” to confer standing would allow plaintiffs to sue about nearly everything. Even if emotional distress were a concrete injury, Midway’s distress is traceable to his prior experiences with data breaches, his general anxiety, and his choice not to replace his credit card, not to Datavault’s conduct.

Midway’s mitigation costs are not “actual” injuries because the harms these costs sought to avoid—fraudulent charges and identity theft—are not imminent. A plaintiff cannot manufacture standing by incurring costs for simply any feared injury; the harm must be imminent. The absence of any fraud strongly suggests that Midway’s harm is not imminent. Therefore, his mitigation costs are not actual injuries for standing purposes.

Midway’s mitigation costs are also not traceable to Datavault. Midway cancelled his credit card *without replacing it*. It would be unreasonable to attribute subsequent costs, such as lost business orders due to not having a credit card, to Datavault.

For the foregoing reasons, Midway did not suffer an injury in fact. Therefore, the district court properly granted Datavault’s motion to dismiss for lack of standing.

STANDARD OF REVIEW

[Omitted for space considerations]

ARGUMENT

To establish Article III standing, Midway “must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Redressability is not in dispute. Midway does not have standing because, as the district court correctly held, he did not suffer an injury in fact. Even if the court finds that Midway did suffer an injury in fact, Midway still does not have standing because his actual injuries were not “fairly traceable” to Datavault’s alleged conduct.

I. Midway Did Not Suffer an Injury in Fact

Courts define “injury in fact” as an injury that is (1) concrete, (2) particularized, and (3) actual or imminent. *TransUnion*, 141 S. Ct. at 2203. The first and third elements are in dispute in this case. A concrete harm is one that is “real, and not abstract.” *Spokeo*, 578 U.S. at 340. Actual injuries are those that have already occurred, whereas imminent injuries are “certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 n.2 (1992)) (emphasis in original).

For the reasons set forth below, none of Midway’s alleged injuries satisfies the requirements for an injury in fact.

A. Midway’s Risk of Harm Is Not Concrete

1. Risk of future harm is not a concrete harm in a suit for damages.

Midway's risk of harm is not concrete because Midway seeks a backward-looking remedy for a forward-looking, speculative harm. In *TransUnion*, the Court held that "in a suit for damages, the mere risk of future harm, standing alone, cannot qualify as a concrete harm" 141 S. Ct. at 2210–11. The plaintiffs in *TransUnion* risked the reputational injury of being misleadingly called potential terrorists in credit reports sent to third parties. *Id.* at 2201. The Court was clear that risk of harm, no matter how unpleasant or severe, does not establish standing without some "separate concrete harm." *Id.* at 2211. The Court reasoned that preventing future harm was appropriately achieved through injunctive relief, whereas damages are a backward-looking remedy. *Id.* at 2210.

The distinction between remedies for risk of harm was followed wholesale in the most recent Seventh Circuit case to address the issue, which applied the categorical rule from *TransUnion* to a different cause of action. *Pierre*, 29 F.4th at 936 ("But a risk, at most, was all it was. That's not enough to establish an Article III injury in a suit for money damages"). Midway's claim for damages falls squarely within the risk-of-harm analyses in these cases and is therefore insufficient to establish a concrete injury.

2. *TransUnion* forecloses the conclusion in *Remijas* that risk of significant harm, standing alone, can establish standing.

The Seventh Circuit in *Remijas v. Neiman Marcus Group, L.L.C.*, 794 F.3d 688 (7th Cir. 2015) concluded that risk of harm was a concrete injury based on reasons foreclosed by *TransUnion*. First, using reasoning from an out-of-circuit district court opinion, the court concluded that a risk of future harm counted as a concrete injury because the risk was "immediate and very real." *Id.* (quoting *In re Adobe Sys., Inc. Priv. Litig.*, 66 F. Supp. 3d 1197, 1214 (N.D. Cal. 2014) (quotation marks omitted)). By contrast, the Court in *TransUnion* concluded that "there is a significant difference between (i) an actual harm that has occurred . . .

and (ii) a mere risk of future harm.” 141 S. Ct. at 2211. The Court held that plaintiffs could not establish a concrete harm if they could not “demonstrate that the risk of future harm materialized.” *Id.* Midway’s future harm has not materialized, so it is not concrete.

Second, the court in *Remijas* applied too low a standard in concluding that a risk of future harm was concrete. 794 F.3d at 693 (“customers should not have to wait until hackers commit identity theft or credit-card fraud . . . because there is an ‘objectively reasonable likelihood’ that such an injury will occur”) (quoting *Clapper*, 568 U.S. at 410). The court misapplied the “objectively reasonable likelihood” analysis from *Clapper*, which said that the “objectively reasonable likelihood standard is *inconsistent with our requirement* that threatened injury must be certainly impending to constitute injury in fact.” 568 U.S. at 410 (emphasis added) (quotation marks omitted). Midway has no more than an “objectively reasonable likelihood” of experiencing fraudulent charges, which is insufficient to establish an injury in fact.

Third, *TransUnion* made it clear that an alleged injury’s concreteness is determined by the actual harm it causes, not by the severity of potential harm or the sensitivity of the information in question. 141 S. Ct. at 2200 (“No concrete harm, no standing.”). The plaintiffs in *TransUnion* risked exposure of misleading information that suggested they were suspected terrorists, which would likely have led to significant reputational harm. *Id.* at 2201. Yet, the Court held that thousands of plaintiffs who bore this risk did not suffer a concrete harm because the risk, alone, was insufficient. *Id.* at 2210–11.

The court in *Remijas* considered two key factors in determining whether there was a substantial risk of identity theft or fraud, one of which was “the sensitivity of the data in question” *Kylie S. v. Pearson PLC*, 475 F. Supp. 3d 841, 846 (N.D. Ill. 2020) (summarizing the reasoning in *Remijas*). This consideration no longer validates a finding of concrete harm.

After *TransUnion*, the risk of any harm—including credit fraud and identity theft—is insufficient to establish a concrete injury.

3. Midway’s risk of harm is far lower than the plaintiffs’ risk in *Remijas*.

Midway’s risk of harm is not concrete because it is much less “immediate” than the plaintiffs’ risk in *Remijas*. The attack on Datavault resulted in zero fraudulent charges or other evidence of identity theft out of 10,000 customers, *Midway*, slip op. at 8, in stark contrast to the Neiman Marcus breach, which resulted in 9,200 instances of fraud. *Remijas*, 794 F.3d at 690. The court in *Remijas* considered “the incidence of fraudulent charges and other symptoms of identity theft” to be one of two key factors supporting a finding of concrete harm (the other was the sensitivity of the data, discussed above). *Kylie S.*, 475 F. Supp. 3d at 846. In *Remijas* and its progeny, hackers had already used stolen data to fraudulently charge customers, thereby manifesting an intent to use the data in a harmful way. *See, e.g., Dieffenbach v. Barnes & Noble, Inc.*, 887 F.3d 826, 829 (7th Cir. 2018).

By contrast, a court faced with a case in which no customers had experienced fraud after a data breach concluded that “[p]laintiffs’ failure to describe any fallout underscores the relatively minimal danger posed by the data breach.” *Kylie S.*, 475 F. Supp. 3d at 847 (internal quotation marks omitted). Even if the reasoning in *Remijas* were unaffected by *TransUnion*, the present facts support the district court’s holding that Midway’s risk of harm is not a concrete injury.

B. Midway’s Emotional Distress Is Not a Concrete Harm

1. Midway’s emotional distress resulted from his perceived risk of harm, an insufficient basis to establish standing in the Seventh Circuit.

Seventh Circuit caselaw precludes Midway’s emotional distress from satisfying the concrete harm requirement. The Seventh Circuit has repeatedly held that emotional distress is not

a concrete injury for standing purposes. *See, e.g., Pierre*, 29 F.4th at 939 (“[W]orry, like confusion, is insufficient to confer standing.”) (citing *Wadsworth v. Kross, Lieberman & Stone, Inc.*, 12 F.4th 665, 668 (7th Cir. 2021); *Pennell v. Glob. Tr. Mgmt., L.L.C.*, 990 F.3d 1041, 1045 (7th Cir. 2021)). If stress or confusion were concrete injuries, “everyone would have standing to litigate about everything.” *Brunett v. Convergent Outsourcing, Inc.*, 982 F.3d 1067, 1068–69 (7th Cir. 2020).

In a footnote, the Court in *TransUnion* acknowledged that knowledge of a risk of harm could lead to emotional harm, but the Court took “no position on whether or how such an emotional or psychological harm could suffice for Article III purposes” 141 S. Ct. at 2211 n.7. In the absence of an answer from the Supreme Court, Seventh Circuit precedent dictates that emotional distress in response to a risk of harm is insufficient to establish standing.

2. Midway’s purported symptoms should not be considered “physical manifestations” of emotional distress.

This court should not confer standing on plaintiffs based on such ambiguous and ubiquitous allegations as undiagnosed “insomnia” and “trouble focusing.” In *Pennell*, the court qualified its holding that emotional distress does not count as a concrete injury: “Nor does stress by itself with no physical manifestations and no qualified medical diagnosis amount to a concrete harm.” 990 F.3d at 1045. The court did not give examples of what would count as adequate “physical manifestations” of stress, but Midway argues that “insomnia” and “trouble focusing” should suffice.

Whether self-diagnosed “insomnia” and self-reported “trouble focusing” are physical manifestations of stress is, at best, ambiguous. Trouble focusing would more naturally be described as “mental” rather than “physical.” Even if this court considers Midway’s mental struggles “physical manifestations,” this court should not hold that trouble sleeping and focusing

are concrete injuries, lest it allow plaintiffs “to litigate about everything.” *Brunett*, 982 F.3d at 1068–69.

Furthermore, discussing anxiety about a data breach with a therapist does not amount to a “qualified medical diagnosis.” Midway has introduced no facts into the record to support an assertion that he has been medically diagnosed with any condition. Despite his alleged symptoms and therapy sessions, Midway’s emotional distress is not a concrete injury.

C. Midway’s Mitigation Costs Are Not Actual Injuries

1. The lack of fraudulent charges shows potential harm is not imminent.

Mitigation costs qualify as actual injuries only when harm is imminent, which Midway’s harm is not. *See Clapper*, 568 U.S. at 422 (“[Plaintiffs] cannot manufacture standing by incurring costs in anticipation of non-imminent harm.”). In other data breach cases, the Seventh Circuit held that some plaintiffs were at risk of imminent harm because a “data breach . . . had already occurred.” *See, e.g., Lewert v. P.F. Chang’s China Bistro, Inc.*, 819 F.3d 963, 967 (7th Cir. 2016). The court in *Remijas* reasoned that harm was imminent because the presumptive “purpose of the hack [was], sooner or later, to make fraudulent charges or assume those consumers’ identities.” 794 F.3d at 693.

This case is readily distinguishable from *Remijas* and *Lewert* on multiple grounds. First, there have been zero fraudulent charges against any of Datavault’s 10,000 customers during the five or six quiet months between the breach and the date Midway filed his complaint. *Midway*, slip op. at 5. This inactivity provides more evidence of the strength of Datavault’s encryption than any “certainly impending” fraud. The lack of fraudulent charges or other nefarious conduct also casts doubt on the assumption stated as dicta in *Remijas* that “the purpose of the hack is, sooner or later, to make fraudulent charges or assume [the] consumers’ identities.” 794 F.3d at

693. The court’s speculation was not a legal conclusion or rule, and this court should not maintain the same presumption when the evidence in this case strongly suggests otherwise.

Second, Midway cancelled his credit card months prior to filing his complaint. *Midway*, slip op. at 7. Hackers would not have access to active credit card information even if they succeeded in decrypting Midway’s digital vault, so they have no direct way of creating fraudulent charges.

2. Midway’s future harms are too attenuated to be imminent.

Hackers cannot use only a social security number and name (the only unencrypted information taken, *Midway*, slip op. at 5–6) to withdraw money, make a purchase, open a new credit card, or otherwise directly harm Midway. Rather, a hacker would have to interact with an employee at a business to open an account or try to access additional personal information as intermediate steps to achieving some harmful outcome. Such a multi-step chain of events involving multiple independent actors is possible but uncertain, and therefore does not satisfy the imminence requirement. *See Clapper*, 568 U.S. at 410 (“[An] attenuated chain of possibilities[] does not satisfy the requirement that threatened injury must be certainly impending.”).

The risk that hackers will access Midway’s financial information within his vault is far more attenuated than the risk of hackers using active credit card numbers in *Remijas* and *Lewert* because the vault is encrypted. Hackers would need to select the proverbial needle of Midway’s file out of the haystack of 10,000 files, try to decrypt the file, and succeed before they could use the information to create fraudulent charges or commit identity theft. This is hardly direct or “certainly impending” harm.

II. Midway’s Alleged Actual Harms Are Not Attributable to Datavault

A. Midway Caused His Own Financial and Emotional Distress

Midway caused his own business costs and related emotional distress by cancelling his credit card *without ordering a new one* before freezing his credit for two months. *Midway*, slip op. at 7. Had he replaced the card first (which would likely have taken only a few minutes longer than cancelling it) he could have fulfilled all 3,900 online orders he missed between early October and December. *Id.* Midway's lack of a credit card caused him to fear that "lost business could threaten his livelihood." *Id.* Midway's business-related costs and emotional distress—which represent much of the damages he seeks—are not "fairly traceable" to Datavault.

Midway also chose to spend hours more than necessary changing his login information over the phone. *Id.* Midway cited concerns about the security risk of changing this information on the various companies' websites, which revealed his anxiety about internet security in general, independent of Datavault. *Id.* Importantly, Midway experienced a prior data breach, so he must have known breaches were a risk of online transactions. *Id.* at 8. Against this backdrop, the ten hours Midway spent changing his login information were traceable to his own anxiety about general risks rather than to Datavault.

B. Midway's Past Caused His Emotional Distress

Midway's prior experience with a data breach and general anxiety caused his emotional distress. Midway stipulated that "the prospect of repeating [his past] ordeal led to substantial stress." *Id.* Datavault had nothing to do with Midway's past ordeal and therefore it is not responsible for any residual effects. Midway's general anxiety, which pre-dated the present breach, is almost certainly a second source of his emotional distress. *Id.* Even if this court finds that Midway's emotional distress is a concrete harm (it is not), his distress would still not establish standing because it is not "fairly traceable" to Datavault.

Applicant Details

First Name	Michael (Chung Hon)
Last Name	Cheng
Citizenship Status	U. S. Citizen
Email Address	ccheng@jd24.law.harvard.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>553 Mather Mail Center</div> <div>City</div> <div>Cambridge</div> <div>State/Territory</div> <div>Massachusetts</div> <div>Zip</div> <div>02138</div> </div> </div>
Contact Phone Number	7133982835

Applicant Education

BA/BS From	Harvard University
Date of BA/BS	May 2019
JD/LLB From	Harvard Law School
	https://hls.harvard.edu/dept/ocs/
Date of JD/LLB	May 23, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Journal of Law and Public Policy Journal of Law and Technology
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Smith, Henry
hesmith@law.harvard.edu
617-496-8835

Manning, John
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617-495-4601

Okediji, Ruth
rokediji@law.harvard.edu
617-495-5920

This applicant has certified that all data entered in this profile and any application documents are true and correct.

MICHAEL (CHUNG HON) CHENG

ccheng@jd24.law.harvard.edu | (713) 398-2835 | 553 Mather Mail Center, Cambridge, MA 02138

June 12, 2023

The Honorable Judge John M. Walker, Jr.
United States Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510

Dear Judge Walker:

I write enthusiastically to apply for a clerkship in your chambers for any term after I graduate in May 2024. A rising 3L at Harvard Law School who has lived in Hong Kong, California, Texas, and Massachusetts, I am also an Articles Editor of the *Harvard Journal of Law and Public Policy*.

Enclosed please find my (1) resume, (2) law school transcript, (3) undergraduate and graduate transcripts, and (4) writing sample. Separately, you will receive letters of recommendation from the following people:

Dean John F. Manning
Harvard Law School
jmanning@law.harvard.edu
(617) 495-4601

Professor Ruth L. Okediji
Harvard Law School
rokediji@law.harvard.edu
(617) 495-4610

Professor Henry E. Smith
Harvard Law School
hesmith@law.harvard.edu
(617) 495-8835

Three facets of my background may be assets to you and your chambers. *First*, my studies and research in equity and private law (with Professor Smith) and statutory interpretation and canons (with Dean Manning), as well as my agency experience at FERC, enable me to add fresh perspective on time-honored and cutting-edge legal doctrines alike. *Second*, I would come to the clerkship with graduate-level experience in physics, engineering, and computer science, equipping me with important domain expertise for IP and other STEM-related cases, in addition to general facility with heavily technical subject matter. *Third*, an internationally award-winning and largely self-taught composer who learned the principles of music composition by studying the scores of classical and modern masters, I have been a voracious autodidact for the past two decades and would approach the clerkship with the same proactivity and zeal.

I would be happy to provide any other information that would be helpful to you. Thank you very much for your time and consideration.

Sincerely,



Michael (Chung Hon) Cheng

MICHAEL (CHUNG HON) CHENG

ccheng@jd24.law.harvard.edu | (713) 398-2835 | 553 Mather Mail Center, Cambridge, MA 02138

EDUCATION

Harvard Law School, Cambridge, MA

J.D., anticipated May 2024

Honors: Dean's Scholar Prize in Civil Procedure
Student Fellow of the Project on the Foundations of Private Law
T.A. Barron Summer Fellowship in Environmental Law (5 awarded each year)

Activities: Dean John F. Manning and Professor Henry E. Smith, Research Assistant
Professor Ruth L. Okediji, Teaching Fellow for Contracts
Harvard Journal of Law and Public Policy, Articles Editor and Senior Editor
Harvard Journal of Law and Technology, Articles Editor
Harvard College, Resident Tutor (Mather House; pre-law, STEM, music, and student prizes)

Writing: Independent paper on NEPA and the major questions doctrine (supervised by Dean John F. Manning)

MIT, Cambridge, MA

S.M. in Technology and Policy, June 2021

Thesis: *A Tale of Two Sovereignties: Public Health and Fundamental Rights in COVID-Era Judicial Reasoning*

Harvard University, Cambridge, MA

S.M. in Engineering Sciences (Electrical Engineering), May 2019

A.B. *magna cum laude* in Physics, Minor in Economics, May 2019

Honors: U.S. Rhodes and Marshall Finalist; John Harvard Scholar

Activities: Harvard Composers Association, Co-President; Harvard Business School, Research Assistant

Study Abroad: University of Freiburg, Germany, Summer 2016

EXPERIENCE

Susman Godfrey LLP, Houston, TX

2L Summer Associate, August 2023

Cravath, Swaine & Moore LLP, New York, NY

2L Summer Associate, May – July 2023

- Draft memorandum outlining legal and equitable causes of action under Delaware law in post-acquisition dispute

Kellogg, Hansen, Todd, Figel & Frederick, PLLC, Washington, DC

2L Summer Associate, May 2023

- Composed memorandum detailing legal theories for deterring class action defendants from picking off named plaintiffs of putative class
- Drafted memorandum regarding laches and ignorance of law in replevin action, as well as counterclaim asserting contract modification by course of dealing in commercial dispute

Quinn Emanuel Urquhart & Sullivan, LLP, Boston, MA

1L Summer Associate, July – August 2022

- Developed theories for breach of contract, tortious interference with contractual relations, and Massachusetts consumer protection statute claims in intellectual property litigation
- Canvassed and summarized D. Mass. trade secret misappropriation and Fed. Cir. patent eligibility caselaw

Federal Energy Regulatory Commission, Washington, DC

Legal Intern to the Honorable Chairman Richard Glick, May – July 2022

- Composed memorandum on major questions doctrine and Commission's statutory authority to consider downstream greenhouse gas emissions in certification of natural gas infrastructure projects
- Researched exceptions to rule against retroactive ratemaking

CarbEx, Houston, TX

Co-Founder, January – August 2021

- Devised business strategy and performed outreach to potential clients for bootstrapped carbon-offset startup

PERSONAL

Fluent in Mandarin and Cantonese. Conversant in German.

Internationally award-winning music composer (2003 – present; music performed before three United States Supreme Court Justices and Former New Zealand Prime Minister Jacinda Ardern) and pianist (2002 – present).

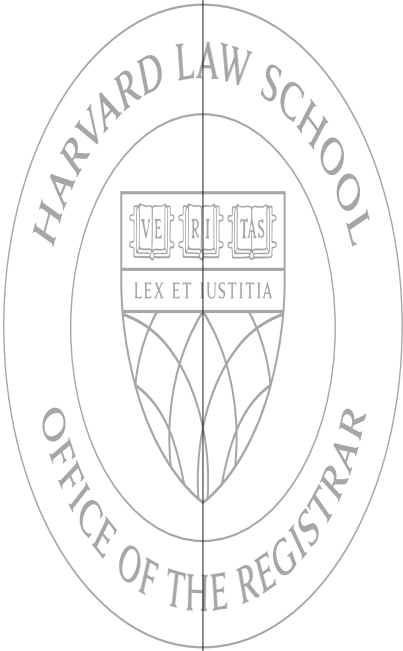
Harvard Law School

Record of: Chung Hon Michael Cheng

Date of Issue: June 8, 2023
Not valid unless signed and sealed
Page 2 / 2

Spring 2024 Total Credits: 3
Total 2023-2024 Credits: 18
Total JD Program Credits: 83

End of official record



Abel Bur
Assistant Dean and Registrar

HARVARD LAW SCHOOL
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Transcript questions should be referred to the Registrar.

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems

Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program

Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998

<i>Summa cum laude</i>	General Average
<i>Magna cum laude</i>	7.20 and above
<i>Cum laude</i>	5.80 to 7.199
	4.85 to 5.799

June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).


Assistant Dean and Registrar

Harvard University

Cambridge, Massachusetts 02138
Harvard College

Cheng, Chung Hon Michael

Admitted in 2015

Good Academic Standing

Mather House

HUID: 80977999

Degrees Awarded

Degree: Bachelor of Arts
Date Conferred: 05/30/2019
College Honors: Magna Cum Laude in Physics
Dept Honors: Recommended for High Honors in Physics

Course	Description	Earned	Grade
APMTH 104	Series Expansions and Complex Analysis	4.000	A
ECON 1420	American Economic Policy	4.000	A-
ENG-SCI 51	Computer-Aided Machine Design	4.000	A
ENG-SCI 153	Laboratory Electronics	0.000	A-
	^A Above Course Applied to Graduate Degree; Excluded from College GPA		
MUSIC 189R	Chamber Music Performance	4.000	PA

Academic Program

Concentration: Physics
Secondary Field: Economics

Test Credits

Advanced standing granted on the basis of Advanced Placement awarded for college-level work completed prior to admissions in the following areas:

Subject
Biology
Chemistry
English Language & Composition
Statistics
United States History

Total of 32.000 course credits Applied Toward Bachelor of Arts

Beginning of Harvard College Record**2015 Fall**

Course	Description	Earned	Grade
COMPSCI 50	Introduction to Computer Science I	4.000	A
ECON 1010A	Intermediate Microeconomics	4.000	A-
MATH 21A	Multivariable Calculus	4.000	A
PHYSICS 15A	Introductory Mechanics and Relativity	4.000	A-

2016 Spring

Course	Description	Earned	Grade
ECON 1011B	Intermediate Macroeconomics: Advanced	4.000	A-
EXPOS 20	Expository Writing 20	4.000	A-
Course Topic:	Class, Race, and Space in Boston		
MATH 21B	Linear Algebra and Differential Equations	4.000	A
MUSIC 51B	Theory II	4.000	A
MUSIC 189R	Chamber Music Performance	4.000	A
PHYSICS 15B	Introductory Electromagnetism	4.000	A

2016 Summer

Course	Description	Earned	Grade
ENVR S-114	Study/Freiburg: Sustainability	4.000	A
HIST S-1240	Study/Freiburg: Eur/Challenges	4.000	A

2016 Fall

Course	Description	Earned	Grade
APMTH 104	Series Expansions and Complex Analysis	4.000	A
ECON 1420	American Economic Policy	4.000	A-
ENG-SCI 51	Computer-Aided Machine Design	4.000	A
ENG-SCI 153	Laboratory Electronics	0.000	A-
	^A Above Course Applied to Graduate Degree; Excluded from College GPA		
MUSIC 189R	Chamber Music Performance	4.000	PA

2017 Spring

Course	Description	Earned	Grade
ENG-SCI 150	Introduction to Probability with Engineering Applications	4.000	A
ENG-SCI 154	Electronic Devices and Circuits	4.000	A
EXPOS 40	Public Speaking Practicum	4.000	A
MUSIC 161R	Advanced Composition	4.000	A
MUSIC 189R	Chamber Music Performance	4.000	A
PHYSICS 143A	Quantum Mechanics I	4.000	A

2017 Fall

Course	Description	Earned	Grade
COMPSCI 141	Computing Hardware	0.000	A-
	^A Above Course Applied to Graduate Degree; Excluded from College GPA		
ECON 2099	Market Design	4.000	A
ENG-SCI 173	Introduction to Electronic and Photonic Devices	4.000	A
GOV 1510	American Constitutional Law	4.000	A
MUSIC 155	Modal Counterpoint	4.000	A

2018 Spring

Course	Description	Earned	Grade
APPHY 216	Electromagnetic Interactions with Matter	0.000	B+
	^A Above Course Applied to Graduate Degree; Excluded from College GPA		
ENG-SCI 231	Energy Technology	0.000	A
	^A Above Course Applied to Graduate Degree; Excluded from College GPA		
PHYSICS 15C	Wave Phenomena	4.000	A
PHYSICS 181	Statistical Mechanics and Thermodynamics	4.000	A

Term Honor: John Harvard Scholar

2018 Fall

Course	Description	Earned	Grade
APMTH 207	Advanced Scientific Computing: Stochastic Methods for Data Analysis, Inference and Optimization	0.000	A
	^A Above Course Applied to Graduate Degree; Excluded from College GPA		
APMTH 254	Information Processing and Statistical Physics	0.000	A-
	^A Above Course Applied to Graduate Degree; Excluded from College GPA		
ECON 1432	Economics of European Integrations	4.000	A
MUSIC 127R	Intensive Conducting	4.000	A-
PHYSICS 191	Advanced Laboratory	4.000	B-

2019 Spring

Course	Description	Earned	Grade
ENG-SCI 277	Microfabrication Laboratory	0.000	A
	^A Above Course Applied to Graduate Degree; Excluded from College GPA		
ENG-SCI 299R	Special Topics in Engineering Sciences	0.000	A
	^A Above Course Applied to Graduate Degree; Excluded from College GPA		
PHYSICS 125	Widely Applied Physics	4.000	A

Date Issued: 06/05/2023

Page 1 of 2

Erika J. McDonald
Erika J. McDonald, Registrar
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Harvard University
Cambridge, Massachusetts 02138
Harvard College


Cheng, Chung Hon Michael
Admitted in 2015
Good Academic Standing

Mather House
HUID: 80977999

Harvard College Career Totals				
Cum GPA:	3.893	Cum Totals	160.000	124.000
End of Record				



Date Issued: 06/05/2023
Page 2 of 2


Erika J. McDonald, Registrar
Not official unless signed

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HARVARD UNIVERSITY FACULTY OF ARTS AND SCIENCES

Office of the Registrar

1350 Massachusetts Avenue, Suite 450

Cambridge, MA 02138

registrar.fas.harvard.edu

(617) 495-1543



This record is for studies in the Faculty of Arts and Sciences including Harvard College, Harvard Graduate School of Arts and Sciences, Harvard School of Engineering and Applied Sciences, and Radcliffe College. For a transcript of the record of any work in a professional school or the Division of Continuing Education, refer to that school. A list of Harvard schools is available at harvard.edu/schools

As of July 1, 1966, the certification of **Radcliffe College** transcripts is under the jurisdiction of the Registrar of the Faculty of Arts and Sciences. Beginning with the academic year 1962, the A.B. or S.B. degree awarded to Radcliffe College students is conferred upon them by Harvard University. The S.B. degree program is accredited by the Accreditation Board for Engineering and Technology.

RATE OF WORK – Beginning with the 2015-2016 academic year, the Faculty of Arts and Sciences adopted a credit system whereby a one-semester course is worth four credits and a year-long course is worth eight credits. Prior to 2015-2016, courses in the Faculty of Arts and Sciences were evaluated as either full courses or half courses. A full course was equal to eight credits; a half course to four credits. The normal rate of work is the equivalent of sixteen credits (four half courses) each term or thirty two credits (four full courses) per year. No additional credit is granted for laboratory or discussion sections.

COURSE LEVELS & SYMBOLS – Refer to registrar.fas.harvard.edu/transcript for a guide to course numbering, abbreviations, and symbols used in course names and numbers.

FOR GRADUATE STUDENTS ONLY – The minimum standard for satisfactory work is a B average in each academic year. A grade of C or INC is offset by a grade of A, and a D by two A's (no account is taken of plus and minus). The grade of INC (Incomplete) is granted only at the discretion of the instructor. A graduate student who receives a grade of INC must complete the work of the course before the end of the term following that in which the course was taken. If the work is not submitted by that time the INC becomes a permanent grade. A graduate student may petition the Dean's Office for an extension of time to complete the work of the incomplete course. Grade point averages are not computed for students in the Graduate School. A unit of "TIME" is ungraded independent work equivalent to one half course or four credits. Graduate Students who cross register into another Harvard School, refer to that school's transcript legend for information about their Grading System.

GRADE POINT AVERAGES Beginning in September 2003, the Faculty of Arts and Sciences moved to the 4-point scale: A=4.00, A-=3.67, B+=3.33, B=3.00, B-=2.67, C+=2.33, C=2.00, C-=1.67, D+=1.33, D=1.00, D-=.67. E, FL, ABS, NCR, UNS, EXLD=0 (zero). Grade Point Averages reported on the transcript for students entering the College in September 2003 are based on the 4-point scale. The transcript for continuing students in attendance as of September 2003 reports both Annual Rank (based on the 15-point scale) and Grade Point Averages (based on the 4-point scale) for the semesters the student attended prior to September 2003.

Refer to registrar.fas.harvard.edu/transcript for a description of the **Undergraduate Rank List** system in use from 1966 to 2003.

This education record is subject to the Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), as amended. It is furnished for official use only and may not be released to or accessed by outside agencies or third parties without the written consent of the student concerned.

Grading System		Satisfactory and Passing Grades:	
Prior to 1950	Since 1950	B- and above are honors grades	
A	A	C- and above are satisfactory grades	
B	A-	D+, D, and D- are unsatisfactory but passing grades	
C	B+	Non-letter Grades:	
D	B	Passing grades	CR Credit
E	B-		PA Pass (D- or higher)
	C+		SAT Satisfactory (C- or higher for undergraduates; B- or higher for graduate students)
	C		SEM Satisfactory; used in emergency circumstances
	C-	Failing grades	NCR No credit
	D+		ABS Absent from final examination and failure in the course
	D		UNS Unsatisfactory
	D-		UEM Unsatisfactory; used in emergency circumstances
	E		EXLD, EXL Excluded

Other Symbols	
ex	Indicates excused from the final examination as an honors candidate taking General Examinations, and the adjacent grade shows the quality of work up to the final examination. Bracketed grades without the accompanying symbols "ex" indicate that the course does not count toward the undergraduate degree
EXC	Graduate students may be excused from a final examination or other course assignment by their division, department, or committee chairs on the basis of having passed departmental examinations or other requirements.
[]	Bracketed – does not count toward degree
EXT	Extension of time granted (undergraduates only)
INC	Incomplete (graduate students only)
WD	Indicates permission to withdraw from the course without completing requirements and without credit for the course
GNR	Grade not reported for a course taken by cross-registration
SUS	Means that the full course was suspended at midyear without credit
AAA	Grade is pending
~	Indicates that a current semester course is currently in progress
*	Indicates a full-year course is currently in progress
MKP	Approved for Makeup Exam - Pending Final Grade
MK2	Second Approval for Makeup Exam - Pending Final Grade

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Massachusetts Institute of Technology
Academic Transcript

Registrar's Office

77 Massachusetts Avenue
Cambridge, Massachusetts
02139-4307

Chung Hon Cheng

MIT ID: 917 062 136

Admitted as a Regular Student for Fall Term 2019-2020

Completed Programs:

Tech & Policy Prog - SM (Course IDS TPP)/Master's

Subject	Subject Name	Lvl	Cred	Grade
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IDS.THG	Graduate Thesis	G	12	A
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04-JUN-2021 Awarded the Degree of Master of Science in
Technology and Policy

Graduate Cumulative GPA: 5.0 (on a 5.0 scale)

Subject	Subject Name	Lvl	Cred	Grade
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FALL TERM 2019-2020 COURSE: IDS TPP GRADUATE STUDENT

6.436	Fundamentals of Probability	G	12	A
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IDS.411	Concepts & Res in Tech & Pol	G	9	A
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IDS.THG	Graduate Thesis	G	12	J/A
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SPRING TERM 2019-2020 COURSE: IDS TPP GRADUATE STUDENT

Semester significantly disrupted starting 3/13/2020 due to
Coronavirus COVID-19 outbreak. Mandatory Alternate Grades
in effect.

14.320	Econometric Data Science	G	12	PE
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15.038	Energy Economics & Policy	G	12	PE
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21G.452	German II	N	9	PE
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HAK.0181	IGA 282: Leading the National	G	12	PE
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IDS.THG	Graduate Thesis	G	12	J/A
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SUMMER TERM 2020 COURSE: IDS TPP GRADUATE STUDENT

Significant disruption in effect due to Coronavirus COVID-
19 pandemic

IDS.THG	Graduate Thesis	G	12	J/A
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FALL TERM 2020-2021 COURSE: IDS TPP GRADUATE STUDENT

Significant disruption in effect due to Coronavirus COVID-
19 pandemic

6.438	Algorithms for Inference	G	12	PE
-------	--------------------------	---	----	----

15.013	Econ for Strategic Decisions	G	9	A
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21G.404	German IV	N	12	A
---------	-----------	---	----	---

IDS.THG	Graduate Thesis	G	12	J/A
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JANUARY TERM 2020-2021 COURSE: IDS TPP GRADUATE STUDENT

Significant disruption in effect due to Coronavirus COVID-
19 pandemic

6.S095	Special Subject in EE & CS	N	6	P
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15.673	Negotiation Analysis	G	6	P
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SPRING TERM 2020-2021 COURSE: IDS TPP GRADUATE STUDENT

Significant disruption in effect due to Coronavirus COVID-
19 pandemic

15.034	Econometrics for Managers	G	9	A
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15.847	Consumer Behavior	G	9	A
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21G.410	Adv German: Professional Comm	N	12	P
---------	-------------------------------	---	----	---

IDS.412	Science, Tech, & Public Policy	G	12	PE
---------	--------------------------------	---	----	----

-- Continued in Next Column --

OFFICIAL TRANSCRIPT:
Order #: AVOW:36923906

ISSUED 28-NOV-2021
Page 1 of 1

Issued to

Michael Cheng

Unofficial without signature
Brian E. Canavan, Registrar

Brian E. Canavan

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to other parties without prior written consent of the student.

Authentication of Transcript

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Academic Terms, Student Classification, and Courses

MIT's academic calendar has fifteen-week Fall and Spring Terms including exams, a ten-week Summer Term, and a four-week January Term.

Classification: Undergraduate students (Freshman, Sophomore, Junior, Senior) and Graduate students are matriculated in MIT degree programs; Special students, Exchange students, and Cross-registered students are not. Non-resident graduate students are working on doctoral thesis away from MIT.

Course: The student's Course (degree program) begins with a department or program code as listed below, followed by an option within the department. Undergraduate program options can indicate specialty area. Option codes used in graduate programs starting in Fall 1994 include: M, P, or A, Master's; D, Doctoral; CT, Transportation; RE, Real Estate Development; W, Joint with Woods Hole Oceanographic Institution. Freshmen are not permitted to register in a department. Transfer students generally enter as Sophomores.

Subject, Level, and Credit

Subject: Consists of a department or program code (see list below) followed by a period and a number. **Level (Lvl):** Subjects included in undergraduate cumulative record: **U**. Subjects included in graduate cumulative record: subject approved for (higher) graduate degree credit: **H** (through Summer 2015); other subject accepted for graduate degree credit: **G**; subject in graduate program but not accepted for graduate degree credit: **N**. **Credit:** A credit unit represents one hour of class (lecture/recitation), laboratory/design/fieldwork, or preparation per week for fourteen weeks. Three MIT credit units = one Semester Hour.

Explanation of Grades since 1980

A	Exceptionally good performance, demonstrating a superior understanding of the subject matter, a foundation of extensive knowledge, and a skillful use of concepts and/or materials.
B	Good performance, demonstrating capacity to use the appropriate concepts, a good understanding of the subject matter, and an ability to handle the problems and materials encountered in the subject.
C	Adequate performance, demonstrating an adequate understanding of the subject matter, an ability to handle relatively simple problems, and adequate preparation for moving on to more advanced work in the field.
D	Minimally acceptable performance, demonstrating at least partial familiarity with the subject matter and some capacity to deal with relatively simple problems, but also demonstrating deficiencies serious enough to make it inadvisable to proceed further in the field without additional work.
F	Failed.
J,U	J Satisfactory progress that term. U Progress not satisfactory that term. Final grade in same subject in a later term also covers this term (e.g., J/B or U/A).
P	Prior to Fall 1990: reflects performance at any of the levels A, B, C, or D. Fall 1990 through Summer 1992: for first-year undergraduates reflects performance at any of the levels A, B, or C; for other than freshmen reflects performance at any of the levels A, B, C, or D. Fall 1992 and after: reflects performance at any of the levels A, B, or C, with students graded on a P/D/F basis.
I	Incomplete. When work completed, final grade follows I (e.g., I/B).
O	Absent from the final examination, did not turn in the final paper or project, and/or was absent during the last two weeks of the term. Equivalent to a grade of F.
OX	Absence satisfactorily explained and excused. When work is completed final grade replaces the OX.
SA	Satisfactorily completed doctoral thesis.
S	Credit awarded for work done elsewhere.
URN	Subject in Undergraduate Research Opportunities Program taken for pay or as a volunteer rather than academic credit (the one unit shown does not count for degree credit).
VIS	Research subject taken as a non-degree visiting student.
&	Grade ending in & indicates Advanced Standing Exam (not included in GPA).
#	Grade ending in # indicates ROTC (not included in degree credit; not included in GPA after Summer 1994).
MG	Indicates grade not submitted by instructor.
IP	Indicates subject "in progress" in current term.
PE	Reflects performance at any of the levels A, B, or C, under an emergency disruption.
IE	Incomplete. Indicates a portion of the subject requirements has not been fulfilled, due to a major disruption of academic activities. When work completed, final grade follows (e.g., IE/B).

Freshman Grading

Prior to Fall 1990: Freshmen graded on P/F basis with F grade not recorded on transcript. Fall 1990 to Summer 2002: Freshmen graded on P/D/F basis with non passing D and F grades not recorded on transcript. Fall 2002 and after: Freshmen graded in their second semester on A/B/C/D/F basis with non-passing D and F grades not recorded on transcript.

Cumulative Grade Point Averages

Calculated on a 5.0 scale with A = 5, B = 4, C = 3, D = 2, F and O = 0. P, PE, SA, S, URN, MG, and IP, as well as non-passing grades in Freshman year, not included in GPA. J, U, I, IE, and OX grades not included in GPA until completed. Undergraduate Cumulative GPA includes subjects at Level U and Graduate Cumulative GPA includes subjects at Level H, G, and N, and up to a maximum of 24 units of thesis.

Department and Program Codes since 1980

1	Civil and Environmental Engineering (Civil Engineering prior to Fall 1992)
2	Mechanical Engineering
3	Materials Science and Engineering
4	Architecture
5	Chemistry
6	Electrical Engineering and Computer Science
7	Biology
8	Physics
9	Brain and Cognitive Sciences (Psychology prior to Fall 1986)
10	Chemical Engineering
11	Urban Studies and Planning
12	Earth, Atmospheric, and Planetary Sciences (Earth and Planetary Sciences prior to Fall 1984)
13	Ocean Engineering (through Spring 2007)
14	Economics
15	Management
16	Aeronautics and Astronautics
17	Political Science
18	Mathematics
19	Meteorology and Physical Oceanography (through Summer 1983) (Meteorology through Summer 1980)
20	Biological Engineering (Applied Biological Sciences through Summer 2003) (Nutrition and Food Science prior to Fall 1985)
21	Humanities
21A	Anthropology (Anthropology/Archaeology from Summer 1989 through Summer 1996)
21F	Foreign Languages and Literatures (through Summer 2015)
21G	Global Languages (Global Studies and Languages through Summer 2020)
21H	History
21L	Literature
21M	Music and Theater Arts
21W	Writing and Humanistic Studies (Writing from Summer 1989 through Summer 1991)
22	Nuclear Science and Engineering (Nuclear Engineering through Spring 2005)
24	Linguistics and Philosophy
25	Interdisciplinary Science (to Spring 1983)
BE	Biological Engineering (through Summer 2006) (BEH Bioengineering and Environmental Health from Fall 1998 through Summer 2002; TOX Toxicology from Spring 1989 through Summer 1998)
CDO	Computation for Design and Optimization (through Summer 2020)
CMS	Comparative Media Studies
CSB	Computational and Systems Biology
CSE	Computational Science and Engineering
EM	Engineering Management
ESD	Engineering Systems Division
HPM	Health Policy and Management (1983-1990)
HST	Harvard-MIT Division of Health Sciences and Technology
IDS	Institute for Data, Systems, and Society
MAS	Media Arts and Sciences
OR	Operations Research
PEP	Professional Education Programs (ASP Advanced Study Program through Summer 2006; CAES Center for Advanced Educational Services from Spring 1996 through Summer 2003; EN Center for Advanced Engineering Study prior to 1995)
RED	Real Estate Development
SCM	Supply Chain Management
SDM	System Design and Management (through Summer 2010)
STS	Science, Technology, and Society
TPP	Technology and Policy Program (through Summer 1999)
UND	Undesignated Sophomore (not yet declared Course)

Used for subjects only: **SEM** Undergraduate Seminar; **CTS** Center for Transportation Studies; **CC** Concourse; **ES** Experimental Study Group; **SP** Special Programs; **AS/MS/NS** ROTC; **SRE** Division for Study and Research in Education; **EC** Edgerton Center; **WGS** Women's & Gender Studies. Subjects taken under a Cross-registration arrangement begin with the following school codes: **BU** Boston U; **HA** Harvard U; **MC** Mass College of Art and Design; **SM** School of Museum of Fine Arts; **TU** Tufts U; **W** Wellesley College.

Privacy

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Revised October 2020

Harvard University
Cambridge, Massachusetts 02138
Graduate School of Arts and Sciences

Cheng, Chung Hon Michael

HUID: 80977999

Good Academic Standing

Degrees Awarded

Degree: Master of Science
Subject: Engineering Sciences
Date Conferred: 05/30/2019

Beginning of Graduate Arts & Sciences Record

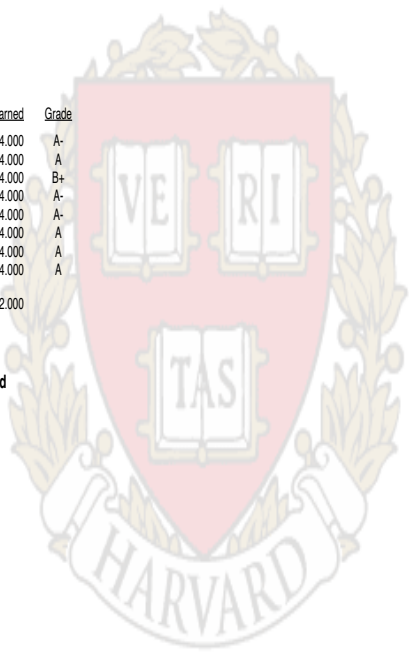
2019 Spring
Program: Master of Science
Subject: Engineering Sciences


Granted 32.000 credits for work done at Harvard University
Applied Toward Master of Science Program

Course	Description	Earned	Grade
APMTH 254	Info Processing Stats Physics	4.000	A-
APMTH 207	Advanced Scientific Computing	4.000	A
APPHY 216	Electromag Interact with Matte	4.000	B+
COMPSCI 141	Computing Hardware	4.000	A-
ENG-SCI 153	Laboratory Electronics	4.000	A-
ENG-SCI 231	Energy Technology	4.000	A
ENG-SCI 299R	Topics in Engineering Sciences	4.000	A
ENG-SCI 277	Microfabrication Laboratory	4.000	A

Course Trans GPA: 3.793 Transfer Totals: 32.000

End of Graduate School of Arts and Sciences Record




Erika J. McDonald, Registrar
Not official unless signed



HARVARD UNIVERSITY FACULTY OF ARTS AND SCIENCES

Office of the Registrar

1350 Massachusetts Avenue, Suite 450

Cambridge, MA 02138

registrar.fas.harvard.edu

(617) 495-1543



This record is for studies in the Faculty of Arts and Sciences including Harvard College, Harvard Graduate School of Arts and Sciences, Harvard School of Engineering and Applied Sciences, and Radcliffe College. For a transcript of the record of any work in a professional school or the Division of Continuing Education, refer to that school. A list of Harvard schools is available at harvard.edu/schools

As of July 1, 1966, the certification of **Radcliffe College** transcripts is under the jurisdiction of the Registrar of the Faculty of Arts and Sciences. Beginning with the academic year 1962, the A.B. or S.B. degree awarded to Radcliffe College students is conferred upon them by Harvard University. The S.B. degree program is accredited by the Accreditation Board for Engineering and Technology.

RATE OF WORK – Beginning with the 2015-2016 academic year, the Faculty of Arts and Sciences adopted a credit system whereby a one-semester course is worth four credits and a year-long course is worth eight credits. Prior to 2015-2016, courses in the Faculty of Arts and Sciences were evaluated as either full courses or half courses. A full course was equal to eight credits; a half course to four credits. The normal rate of work is the equivalent of sixteen credits (four half courses) each term or thirty two credits (four full courses) per year. No additional credit is granted for laboratory or discussion sections.

COURSE LEVELS & SYMBOLS – Refer to registrar.fas.harvard.edu/transcript for a guide to course numbering, abbreviations, and symbols used in course names and numbers.

FOR GRADUATE STUDENTS ONLY – The minimum standard for satisfactory work is a B average in each academic year. A grade of C or INC is offset by a grade of A, and a D by two A's (no account is taken of plus and minus). The grade of INC (Incomplete) is granted only at the discretion of the instructor. A graduate student who receives a grade of INC must complete the work of the course before the end of the term following that in which the course was taken. If the work is not submitted by that time the INC becomes a permanent grade. A graduate student may petition the Dean's Office for an extension of time to complete the work of the incomplete course. Grade point averages are not computed for students in the Graduate School. A unit of "TIME" is ungraded independent work equivalent to one half course or four credits. Graduate Students who cross register into another Harvard School, refer to that school's transcript legend for information about their Grading System.

GRADE POINT AVERAGES Beginning in September 2003, the Faculty of Arts and Sciences moved to the 4-point scale: A=4.00, A-=3.67, B+=3.33, B=3.00, B-=2.67, C+=2.33, C=2.00, C-=1.67, D+=1.33, D=1.00, D-=.67. E, FL, ABS, NCR, UNS, EXLD=0 (zero). Grade Point Averages reported on the transcript for students entering the College in September 2003 are based on the 4-point scale. The transcript for continuing students in attendance as of September 2003 reports both Annual Rank (based on the 15-point scale) and Grade Point Averages (based on the 4-point scale) for the semesters the student attended prior to September 2003.

Refer to registrar.fas.harvard.edu/transcript for a description of the **Undergraduate Rank List** system in use from 1966 to 2003.

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Grading System	
Prior to 1950	Since 1950
A	A
B	A-
C	B+
D	B
E	B-
	C+
	C
	C-
	D+
	D
	D-
	E

Satisfactory and Passing Grades:	
B- and above are honors grades	
C- and above are satisfactory grades	
D+, D, and D- are unsatisfactory but passing grades	

Non-letter Grades:		
Passing grades	CR	Credit
	PA	Pass (D- or higher)
	SAT	Satisfactory (C- or higher for undergraduates; B- or higher for graduate students)
	SEM	Satisfactory; used in emergency circumstances

Failing grades	NCR	No credit
	ABS	Absent from final examination and failure in the course
	UNS	Unsatisfactory
	UEM	Unsatisfactory; used in emergency circumstances
	EXLD, EXL	Excluded

Other Symbols	
ex	Indicates excused from the final examination as an honors candidate taking General Examinations, and the adjacent grade shows the quality of work up to the final examination. Bracketed grades without the accompanying symbols "ex" indicate that the course does not count toward the undergraduate degree
EXC	Graduate students may be excused from a final examination or other course assignment by their division, department, or committee chairs on the basis of having passed departmental examinations or other requirements.
[]	Bracketed – does not count toward degree
EXT	Extension of time granted (undergraduates only)
INC	Incomplete (graduate students only)
WD	Indicates permission to withdraw from the course without completing requirements and without credit for the course
GNR	Grade not reported for a course taken by cross-registration
SUS	Means that the full course was suspended at midyear without credit
AAA	Grade is pending
~	Indicates that a current semester course is currently in progress
*	Indicates a full-year course is currently in progress
MKP	Approved for Makeup Exam - Pending Final Grade
MK2	Second Approval for Makeup Exam - Pending Final Grade

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June 09, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Recommendation for Michael (Chung Hon) Cheng

Dear Judge Walker:

It is with great pleasure that I write to you to recommend Michael Cheng for a clerkship in your chambers. Based on Michael's outstanding performance in my classes and my discussions with him, I believe that Michael will make a superb judicial clerk. He has my strongest and most enthusiastic recommendation.

I got to know Michael as a student in my course on Equity in the Spring of 2022 (the first time the subject has been taught under that label since 1948). In this class, we explored the principles of equity, equitable remedies, defenses, and applications of equity in areas like contracts, trust, and corporate law. The class also contained a serious component of restitution and unjust enrichment. The readings were cases and excerpts from the secondary literature. This was, to say the least, a highly experimental class, and Michael's contribution made a big difference. Michael could be counted on to offer unique and thoughtful comments and questions. What made this especially impressive was that Michael was only one of two students in the class taking it as a second semester 1L elective. As expected, his exam was a model of depth, cogency, and concision, and it easily received a grade of Honors.

More recently, Michael was a student in the Private Law Workshop Seminar in the Fall of 2022. In this workshop-style class we host seven speakers who present works in progress. In the weeks with no speaker, we discuss classic and background readings. For four of the speakers, students are required to write short (approximately three page) reaction papers, to which my co-teacher, John Goldberg, and I offer feedback. His reaction papers drew attention to important points and were consistently insightful and well crafted. His participation was always focused and productive. This was also true of his excellent participation in the informal speaker events as a Private Law Fellow. He was one of the most active Fellows and he and the program both benefited greatly from his engagement and good citizenship. His enthusiasm for ideas and dedication to work is obvious, and I have recently taken him on as a Research Assistant in connection with my work as Reporter for the American Law Institute's project for a Fourth Restatement of Property, for which he has already done excellent work reflected in our most recent Tentative Draft.

In both Equity and the Private Law Workshop Seminar, Michael attended office hours on a very regular basis. He was genuinely interested in the subject matter, and his questions were wide ranging and subtle. He truly cares about the law and is developing mature sense of the subject. Michael has a special quality of mind: he is a generalist at an astoundingly high level. He has a STEM background, which was reflected to great effect in some of his reaction papers in the private law workshop. He is also a first-rank musician – an award-winning pianist and a gifted composer of pieces. As both a performer and a composer, he is far more self-taught than most at his level. I have attended one of his piano recitals and the premier of the choral work he composed and conducted for the Harvard Faith and Veritas event this past Spring. As a (very unaccomplished) pianist myself, I could appreciate the rare talent behind these performances and also the incredible juggling act adding hundreds of hours and dedication to his art on top of his heavy class load and law school activities.

Michael has shown ample evidence of a stellar legal talent that could easily stand alone, if it needed to. Not every highly talented person would be a pleasure to work with, as Michael most definitely is. Indeed, Michael's other qualities suit him well for a clerkship. He speaks with an upbeat self-confidence but is always willing to listen to others in a gracious and generous spirit. This is especially evident in the great amount of time he has devoted to being a pre-law tutor in one of the undergraduate houses – again, in addition to all the other activities he is engaging in at the highest levels.

It is therefore with maximum confidence and enthusiasm that I recommend Michael for a clerkship in your chambers. I would certainly be glad to answer any questions you might have. My phone number is listed below.

Sincerely yours,

Henry E. Smith
Fessenden Professor of Law
Harvard Law School, HA320
1575 Massachusetts Avenue
Cambridge, MA 02138
hesmith@law.harvard.edu
617-496-8835 (phone)
617-496-4880 (fax)

HES/blc

Henry Smith - hesmith@law.harvard.edu - 617-496-8835

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I write in support of Michael Cheng's application to clerk in your chambers following his graduation from Harvard Law School in 2024. Mr. Cheng was my student in a small workshop-style course and has served as my research assistant. I know him well and think highly of him.

Mr. Cheng was a student in the Public Law Workshop, which I co-taught with my colleague Martha Minow during Spring Term 2023. In the workshop, a professor either from HLS or from another school comes to present a work in progress on administrative law, constitutional law, federal courts, legislation, or related topics of public law. We ask our students each week to submit two questions on the paper being presented and, one time during the semester, to prepare a short reaction paper analyzing the work in progress. Mr. Cheng added a great deal to the workshop. He is very thoughtful about law and doctrine and has a keen analytical perspective on questions about constitutional structure and the allocation of decision-making responsibility among different institutions. That frame of reference productively informed the question he asked. His writing is clear, direct, well-organized, and persuasive. He is willing to question an author's assumptions, but did so always thoughtfully and in a well-grounded way. He easily earned an H in a class full of very strong students.

During Fall Term 2022, I needed someone to help me prepare two presentations – one for a statutory interpretation panel at the Federal Judicial Center's National Symposium for U.S. Circuit Judges in early November and the other for a speech on the major questions doctrine at Harvard's Saturday of Symposia in December. Because the semester was especially busy, I needed to get background that I could easily translate from the raw material of a well-constructed memo to coherent sets of remarks. This required Mr. Cheng to listen carefully, research purposefully, and present his written product clearly and concisely. He did an excellent job along all of those dimensions – producing work that was precisely what I needed. I knew something about both topics, but he was able to flesh out my understanding and bring me up to date thematically on the most recent case law and scholarship. The discussions we had and the memos themselves were extremely helpful and illuminating, enabling me to prepare complex topics with a strong working knowledge of the judicial and academic topography. (Mr. Cheng is now pursuing issues under the major questions doctrine in a paper that he will complete under my supervision in the coming semester).

Mr. Cheng is a highly accomplished student. In his first two years at Harvard Law School, he earned 14 H's, 3 P's, and 1 Dean's Scholar Prize. That is an impressive record. It also builds on a very distinguished record at Harvard College, where he graduated magna cum laude in Physics with a minor in Economics. He also holds an S.M. in Engineering. At Harvard Law School, Mr. Cheng has been a student fellow in two different programs while also serving as a research assistant to Professor Henry Smith and as a teaching fellow to Professor Ruth Okediji. He also has done significant work on two student journals.

Mr. Cheng is also an extremely nice person. He has a great deal of humility. He is very interested in law and thus, by my lights, a very interesting person with whom to exchange ideas. As I mentioned above, he also listens very well. And his participation in the workshop revealed a strong ability to engage and to disagree with others collegially. I feel confident that he would work well in chambers.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

John F. Manning
Morgan and Helen Chu Dean and Professor of Law

John Manning - jmanning@law.harvard.edu - 617-495-4601

June 12, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

RE: Michael Cheng

Dear Judge Walker:

Michael Cheng has applied for a clerkship position. I am pleased to highly recommend him. Michael earned an Honor's grade in my Contracts exam. He is a concise and clear writer with superb analytical skills. In two years of law school, Michael has earned fifteen Honors grades and an "A" for a non-law school course. His academic record, work ethic, discipline, and dedication to excellence are impressive. Michael is also a remarkable human being; he is diligent, kind, considerate of others, and fair-minded. He has a great sense of humor and strong personal values. I recommend him strongly and unequivocally.

Michael was among the first students I noticed in my Contracts course. Early in the semester, he asked a question to clarify the doctrine of consideration. In debating the merits of the doctrine, Michael and his colleagues were bewildered by the rigidity of the requirement, especially in cases where the parties clearly intended to be bound by their commitments. In a vigorous classroom discussion, Michael argued that the stability of the common law rests in part on its capacity to generate rules that work most of the time, while making incremental changes in response to shifting societal conditions. Michael asked whether the law ought not to be more concerned about the stability of the mechanisms that drive legal evolution. He noted that the distinction between consideration and Promissory Estoppel suggests a continuum in the nature of the bargain rather than a difference in form.

The class had a robust conversation around Michael's contributions, yielding a quality of dialogue that foreshadowed future debates over the semester. Michael's thoughtfulness and detailed preparation throughout the semester were evident in his exam. He systematically analyzed a complex fact pattern, providing strong reasoning for his arguments and incorporating theoretical and doctrinal analyses as needed.

I was sufficiently impressed by Michael's performance and character that I invited him to serve as my lead Teaching Fellow for Contracts, a position he held throughout his second year. As a Teaching Fellow, Michael organized the various syllabus units to enhance my preferred pedagogical approach. He refined and executed my teaching plan and had principal responsibility for coordinating three additional Teaching Fellows. Michael was fantastic in the role. He was diligent, kind, a good listener, and generous with his expertise. The students expressed great appreciation and admiration for his work ethic.

This year, Michael took my Copyright class where he again performed well in class. He asked thoughtful questions, was well-prepared, and engaged meaningfully with his peers. He often helped steer class discussions back to the critical questions at hand, focusing on the logic of the court's reasoning and identifying the limits of the arguments presented in the court's opinion. When asked to share his thoughts on a particular doctrine or hypothesis, Michael demonstrated independent thought grounded in careful research.

Michael's excellent academic record stands out especially because of his STEM background. Having studied physics and engineering for so many years (and having just completed the machine learning Computer Science class during his 2L spring), Michael has an in-depth understanding of empirical methods and modes of analytic engagement that have served him quite well in law school, and that I believe add to the set of skills that will make him a superb clerk.

Last, I should mention Michael's love of music because it has shaped him profoundly. Simply stated, Michael is a gifted musician. His musical background helped train him to be relentless in his pursuit of excellence and perfection. I learned from our many conversations that he learned to be highly attentive to detail from an early age, and to balance competing obligations well. He is self-taught in composition, having learned how to write by analyzing scores by Mozart, Beethoven, and other classical musicians.

As a 1L, Michael participated in piano competitions. He was a finalist and Diploma awardee of the International J.S. Bach Piano Competition in Saarbrücken, Germany, an achievement he attained despite his academic demands and resident tutorship at Harvard College. This year, Michael was invited to compose and premiere two significant compositions for two separate Harvard conferences—one in the fall (19-minute piano quintet) and one in the spring – a choral piece for a university-wide Faith and Veritas conference. This piece earned him acclaim from Harvard alums worldwide. Michael's talent is simply extraordinary.

I have had many conversations with Michael outside the classroom. He is highly conversational, well-traveled, and very well-read. Michael makes careful listening to others a priority, no matter what the conversation is about or with whom he is conversing. He has a fantastic ability to master intricate details without losing sight of the big picture. He is kind, a team player, and smart without the slightest hint of arrogance. Michael is genuinely open to perspectives that differ from his, and he is quite generous with colleagues whose intemperance might tempt good arguments to become personal attacks. He is a person of integrity with a strong ethical and moral compass.

I enthusiastically recommend Michael to you. You will enjoy his keen intellect, distinctive array of talents, strength of character, and thoughtful personality. He will be a superb addition to your chambers.

Ruth Okediji - rokediji@law.harvard.edu - 617-495-5920

Please do not hesitate to contact me if I can provide additional information.

Sincerely,

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WRITING SAMPLE

Drafted Spring 2023

Attached is 16-page excerpt from a memorandum that I composed as research assistant to Professor Henry E. Smith, in support of his work as a reporter of the upcoming *Restatement (Fourth) of Property*.

Partly owing to the historical distinction between law and equity, the law of easements, covenants, and servitudes has often been regarded as an antiquated morass. The *Restatement (Third) of Property: Servitudes* sought to simplify the doctrine by unifying all property-based restrictions into a single instrument called the servitude. Section 7.10, additionally, advocates for a unified doctrine of changed circumstances that applies to all servitudes and for the modification, rather than termination, of obsolete servitudes. This memorandum investigates the predecessor doctrines of (1) changed circumstances for covenants and (2) frustration for easements, their roots in equity and their respective focuses on enforcement and termination, and the reception of the unified approach and of Section 7.10 by courts and among scholars.

All of the research, writing, and analysis is mine.

From: Michael Cheng
To: Prof. Henry E. Smith
Date: May 29, 2023
Re: Changed Circumstances, Frustration, and Reception of § 7.10 of the *Third Restatement*

MEMORANDUM

In this memorandum, I address the following four questions:

1. To what extent do the doctrines of (1) changed circumstances for covenants and (2) frustration (and, to a lesser extent, abandonment) for easements resemble each other?
2. To what extent is each doctrine rooted in equity, and is each doctrine primarily concerned with the enforcement of the restriction, termination of the restriction, or both?
3. How have courts responded to Section 7.10 of the *Restatement (Third) of Property: Servitudes*, specifically its unified treatment of servitudes vis-à-vis changed circumstances and its invitation to modify servitudes rather than terminating them outright?
4. What has been the appraisal of the *Third Restatement's* unified approach and Section 7.10 in scholarly articles and treatises?

Briefly here, and in detail below:

1. Changed circumstances and frustration (in practice a family of related doctrines) both render a restrictive device inapplicable when its purpose arguably no longer exists or cannot be fulfilled. They are essentially analogs in operation but are motivated by very different justifications.

2. Changed circumstances is rooted in equity and is primarily an equitable defense against the *enforcement* of a covenant, whereas frustration and its related doctrines are not rooted in equity and operate to *terminate* an easement that no longer serves its purpose.
3. Courts have largely disregarded the *Third Restatement's* unified doctrine of changed circumstances and have similarly rejected its invitation to modify servitudes rather than terminating them, mainly on grounds of stability and predictability.
4. Academic scholarship has been welcoming toward the *Third Restatement's* unified approach and toward modification, but treatises have generally rejected these positions, noting courts' cold reception toward them.

Part I

Changed Circumstances, Frustration, and Their Comparisons

The traditional doctrines of changed circumstances for covenants and frustration for easements resemble each other in that they produce analogous outcomes—they remove obsolete restrictions on land use imposed by their respective devices. However, the motivations behind the two doctrines are very different, as are their styles of analysis, as will be further discussed below and in Part II, *infra*. The *raison d'être* of changed circumstances—chiefly an equitable defense—is that it would be inequitable to burden covenantors with restrictions that no longer serve any appreciable purpose. See, e.g., *Trustees of Columbia College v. Thacher*, 87 N.Y. 311, 321 (N.Y. 1882). By contrast, frustration (in practice known by a family of doctrines like

cessation of purpose, cessation of necessity, and impossibility) is not chiefly equitable and results in the termination of easements altogether, grounded in the common-law preference for limiting the scope and duration of encumbrances. *See, e.g., 3 Tiffany Real Property* § 817 (3d ed. 2022). In other words, while changed circumstances reflects a concern for an individual party (*i.e.*, the covenantor), frustration and its related doctrines reflect a concern for public policy generally.

In order to compare the two doctrines, it is best to begin by discussing their respective doctrinal elements.

A. *Changed Circumstances for Covenants*

Courts should not grant equitable relief against violations of restrictive covenants “if conditions have so changed since the making of the promise as to make it impossible longer to secure in a substantial degree the benefits intended to be secured by the performance of the promise.” *Restatement (First) of Property* § 564 (Am. L. Inst. 1944). This defense is known as the doctrine of changed circumstances. *See, e.g., 9 Powell on Real Property* § 60.10 (Michael Allan Wolf ed., 2023).

The standard for changed circumstances is strict. *See, e.g., Rombauer v. Compton Heights Christian Church*, 40 S.W.2d 545, 552–53 (Mo. 1931). As the Missouri Supreme Court influentially stated in *Rombauer v. Compton Heights Christian Church*, the change must be “so radical as practically to destroy the essential objects and purposes of the agreement.” *Id.* at 553. This formulation has been followed by courts in many other states. *See, e.g., Hawthorne v. Realty Syndicate, Inc.*, 268 S.E.2d 494, 499 (N.C. 1980); *Inabinet v. Booe*, 202 S.E.2d 643, 645 (S.C. 1974); *Wallace v. St. Clair*, 127 S.E.2d 742, 757 (W. Va. 1962); *Booker v. Old Dominion Land Co.*, 49 S.E.2d 314, 317 (Va. 1948); *Gladstone v. Gregory*, 596 P.2d 491, 494 (Nev. 1979).

An illustrative example is the early case of *Trustees of Columbia College v. Thacher*, 87 N.Y. 311 (N.Y. 1882). There, the New York Court of Appeals held that a covenant restricting a lot at 50th Street and Sixth Avenue in Manhattan to residential use only was unenforceable in equity, where (1) commercial development had taken hold along Sixth Avenue, (2) an elevated steam railway had been subsequently erected directly in front of the property, and (3) an accompanying elevated railway station had been built right at that intersection, exposing the residence to view from strangers. *Id.* at 319–21. According to the court, the mere fact that commercial development in the adjoining lots had changed the character of the surrounding area was insufficient, without more—after all, the court reasoned, the very purpose of a restrictive covenant was to prevent the encumbered property from being swept along by the currents of change. *Id.* at 319. Dispositive for the court, rather, was the fact that the construction of the railway had resulted in a *permanent* “depreciation” of the property that “rendered privacy and quiet . . . impossible.” *Id.* at 320. For that reason, “to enforce [the covenant] would [be to] work oppression, and not equity.” *Id.* at 321.

Some courts also impose a time element, requiring that a certain duration elapse before the defense of changed circumstances can apply. “In Maryland, for example, the particular state of affairs bearing on the potential for a covenant to fulfill its purpose must be viewed with respect to the passage of time.” *City of Bowie v. MIE Props., Inc.*, 922 A.2d 509, 528 (Md. 2007). “The proper legal standard . . . is to examine whether, after the passage of a reasonable period of time, the continuing validity of the covenant cannot further the purpose for which it was formed in light of changed relevant circumstances.” *Id.* at 526. Few other states, if any, have imposed the same requirement, though it is of course rare that conditions would drastically change very soon after the execution of a covenant.

In sum, despite some variations in wording, *see, e.g., Vernon Twp. Volunteer Fire Dept., Inc. v. Connor*, 855 A.2d 873, 880 (Pa. 2004), changed circumstances generally requires (1) a major departure in the surrounding area of the property that (2) renders the original benefit essentially worthless and (3) inequitable to enforce, (4) through no fault of the invoking party. *See, e.g., Rombauer*, 40 S.W.2d at 554; *Circle Sq. Co. v. Atlantis Dev. Co.*, 230 S.E.2d 704, 709 (S.C. 1976).

B. *Frustration and Related Doctrines for Easements*

The concept of “frustration” in the context of easements actually encompasses several related doctrines. Generally speaking, these doctrines are known by the names of (1) cessation of purpose, *see* 28A C.J.S. *Easements* § 160 (2023); (2) cessation of necessity, *see id.* § 161; and (3) impossibility, *see Byrd Cos. v. Smith*, 591 So. 2d 844, 847 (Ala. 1991). The definitions of these doctrines are as follows:

- *Cessation of purpose* occurs when the purpose for which the easement was created no longer exists. 28A C.J.S. *Easements*, *supra*, § 160.
- *Cessation of necessity* occurs when a means of access alternative to the existing easement exists. *Id.* § 161. Generally speaking, even if the new alternative is less convenient, the original easement will be extinguished once it is no longer strictly *necessary*. *Id.*
- *Impossibility* occurs when the contemplated purpose of the easement is rendered totally and permanently incapable of accomplishment. *Id.* § 160. It is a close cousin of cessation of purpose, and some sources treat impossibility and cessation of purpose as interchangeable, *see id.*, even though they technically apply under different circumstances.

- The term “frustration” appears to be infrequently used in conjunction with easements.

Which avenue of termination applies to any given easement depends on the way in which the easement was created. For the four main types of easements—express easement, easement by prescription, easement implied by prior use, and easement implied by necessity—there are a few common-law rules that apply, some seemingly in conflict with one another:

- *First*, express easements do not terminate when the necessity or purpose expires. *Id.*
- *Second*, “an easement granted for a particular purpose terminates as soon as such purpose ceases to exist, is abandoned, or is rendered impossible of accomplishment.” *Byrd Cos.*, 591 So. 2d at 847 (quoting *Trustees of Howard College v. McNabb*, 263 So. 2d 664, 673 (Ala. 1972)); accord *Mich. Dept. of Nat. Res. v. Carmody-Lahti Real Estate, Inc.*, 699 N.W.2d 272, 286 (Mich. 2005) (quoting 25 Am. Jur. 2d *Easements and Licenses* § 96 (2004)).
- *Third*, an easement implied by necessity always terminates when the underlying necessity expires. *E.g.*, *Aizpitarte v. Minear*, 508 P.3d 1260, 1275–76 (Idaho 2022); *Sluyter v. Hale Fireworks P’ship*, 262 S.W.3d 154, 157 (Ark. 2007). However, express easements, easements by prescription, and easements implied by prior use *do not* terminate when their underlying necessities expire. *E.g.*, *Aizpitarte*, 508 P.3d at 1275–76; *Niedfeldt v. Evans*, 75 N.W.2d 307, 309 (Wis. 1956).

In the above typology, there is one area of overlap: Can an express easement, if it was “created for a particular purpose,” be terminated via cessation of purpose or impossibility? The answer appears to be yes. See 28A C.J.S. *Easements*, *supra*, § 160 (“While an express easement generally does not terminate even when the necessity or purpose of the easement ceases, an easement granted for a particular purpose may terminate as soon as such purpose ceases to exist” (footnote omitted)); 3 *Tiffany Real Property*, *supra*, § 817. A case in point is *Mussey v. Proprietors of Union Wharf*, 41 Me. 34 (1856). There, the Maine Supreme Judicial Court held that an express easement for the purpose of providing access to a dock via the servient property was extinguished due to cessation of purpose after the city government constructed a street that permanently blocked the servient property’s access to the dock. *Id.* at 37–38.

To summarize, then, there are two categories of easements to which the family of frustration doctrines applies: (1) easements implied by necessity, which terminate when the *necessity* expires, and (2) easements granted for a particular purpose, which may have been created by *any* method and terminate when the *purpose* is no longer capable of achievement.

Lastly, termination by abandonment is possible for all types of easements. See 4 *Powell on Real Property*, *supra*, § 34.18. “Abandonment . . . requires [(1)] a showing of intent and [(2)] acts inconsistent with its continued existence.” *Martin v. Simmons Props., LLC*, 2 N.E.3d 885, 900 (Mass. 2014) (citing *Cater v. Bednarek*, 969 N.E.2d 705, 709–10 & n.15 (Mass. 2012)). “[N]onuse of itself, no matter how long continued, will not work an abandonment.” *Id.* (alteration in original) (quoting *Cater*, 969 N.E.2d at 710 n.15).

C. Comparisons

As can be seen from the above, similar analytical steps undergird changed circumstances on the one hand and cessation of purpose, cessation of necessity, and impossibility on the other.

For the former, a court begins its inquiry by ascertaining the purpose of the covenant. *See, e.g., MIE Props.*, 922 A.2d at 524. If the purpose of the covenant can no longer be fulfilled due to a radical change in the character of the surrounding neighborhood, such that the covenantee no longer reaps any benefit from the covenant, the covenant will not be equitably enforced. *See, e.g., id.* at 526.

For the latter, a court also begins its inquiry by ascertaining the purpose of the easement, *see, e.g., Olson v. H & B Props., Inc.*, 882 P.2d 536, 539 (N.M. 1994) (citing Jon W. Bruce & James W. Ely, Jr., *The Law of Easements and Licenses in Land* ¶ 9.03 (1988)), or the necessity purportedly addressed by the easement, *Ballard v. SVF Foundation*, 181 A.3d 27, 37 (R.I. 2018). If the purpose of an easement granted for a particular purpose is no longer capable of fulfillment, the easement is considered extinguished. *See, e.g., Olson*, 882 P.2d at 539 (citing Bruce & Ely, *supra*, ¶ 9.03). If the necessity of an easement implied by necessity no longer exists, the easement is similarly extinguished. *See, e.g., Ballard*, 181 A.3d at 37. Thus, the two families of doctrines are essentially analogs.

However, there are crucial differences as to *why* these doctrines exist, as will be further discussed in Part II, *infra*. Generally speaking, changed circumstances for covenants is rooted in equity, but cessation of purpose, cessation of necessity, and impossibility for easements are not. Correspondingly, the given justifications for each are also different. The driving intuition of changed circumstances is that it would be *inequitable* to enforce a covenant that burdened a covenantor and no longer served its intended purpose for the covenantee. *See, e.g., Thacher*, 87 N.Y. at 321. In this regard, the object of the doctrine's solicitude is the covenantor, an individual party. By contrast, in the easements context, the primary justification of cessation and impossibility is that "meaningless burdens on land" should be "eliminate[d]." *Olson*, 882 P.2d at

539 (citing *Bruce & Ely, supra*, ¶ 9.03); *see also* 3 *Tiffany Real Property, supra*, § 817. Here, the doctrine's concern is one of public policy more broadly, rather than the inequities visited upon any individual party.

Lastly, abandonment operates rather differently from either of these families of doctrines in two key ways. *First*, abandonment requires intent, *see, e.g., Martin*, 2 N.E.3d at 900 (citing *Cater*, 969 N.E.2d at 709–10 & n.15), while changed circumstances, cessation of purpose, cessation of necessity, and impossibility do not. In fact, in these other contexts, intent is relevant only in the context of the parties' purpose for the restriction, not whether the restriction should still be enforced. After all, when two parties are in court over the enforcement of a covenant or easement, one party clearly desires its enforcement. *Second*, abandonment is relational between only the burdened and benefiting parties—courts examine the intent and actions of the benefiting party and translate those into a decision to terminate or not to terminate an easement, a decision affecting only the two parties. By contrast, the other doctrines cast a broader view by requiring that the change be caused by *third* parties. In fact, it is a prerequisite of changed circumstances (especially), cessation of purpose, cessation of necessity, and impossibility that the burdened party *not* have done anything to cause the changed circumstances or cessation of purpose. *See, e.g., Thacher*, 87 N.Y. at 321.

Part II Equitable Roots, Enforcement, and Termination

Changed circumstances originated as an equitable defense to enforcement when a covenant no longer brought any appreciable benefit to its covenantee, *see* 7 *Thompson on Real Property* § 61.07(f)(1) (David A. Thomas ed., 2023), and was subject to a variety of equitable doctrines, like unclean hands, *see id.* Specifically, it appears to have grown out of a recognized

exception to specific performance. *See, e.g., Trustees of Columbia College v. Thacher*, 87 N.Y. 311, 317–19 (N.Y. 1882). Over time, it became possible to invoke changed circumstances as a basis for affirmative relief, in which case the covenant would be terminated, rather than merely held unenforceable against the covenantor. *See, e.g., Dunlap v. Beaty*, 122 S.E.2d 9, 15–16 (S.C. 1961).

By contrast, in the context of easements, courts have treated frustration and its related doctrines as methods of termination, with essentially no reference to equitable principles. *See, e.g., Niedfeldt v. Evans*, 75 N.W.2d 307, 308–09 (Wis. 1956). While it is possible to suspend an easement, *see, e.g., 28A C.J.S. Easements* § 145 (2023), such cases appear to be rare.

A. *Changed Circumstances for Covenants*

1. Roots in Equity?

“Originally, changed circumstances . . . operated only as an equitable defense to injunctive relief but was not a defense to the covenant at law.” 7 *Thompson on Real Property, supra*, § 61.07(f)(1). As the Missouri Supreme Court explained in *Rombauer*, the defense of changed circumstances is predicated “not on the theory that the contract, as such, fails to cover the situation and does not apply to it, for, if that were true, it would be unenforceable even at law; but it is because the changed conditions forbid *equitable intervention*.” *Rombauer v. Compton Heights Christian Church*, 40 S.W.2d 545, 553 (Mo. 1931) (emphasis added). Indeed, on the surface, courts generally believe that they are doing equity when ruling on changed circumstances, often using the vocabulary of equity when doing so. *See, e.g., Circle Sq. Co. v. Atlantis Dev. Co.*, 230 S.E.2d 704, 709 (S.C. 1976) (“*Equity* will enforce restrictive covenants made for the benefit of an owner’s land if they remain of substantial value” (emphasis added)).

As a historical note, the defense of changed circumstances appears to have its roots in specific performance. Specifically, because equitable intervention in enforcing a covenant was considered equivalent to the remedy of specific performance in the context of contractual breach, changed circumstances originated as a case in which it would be inequitable to enforce the contract via specific performance. In *Thacher*, for instance, the New York Court of Appeals declined to enforce a restrictive covenant due to changed circumstances and grounded its reasoning in specific performance, using language and reasoning that was independent of the property-law context and would have applied to any contract generally. *See* 87 N.Y. at 317–19. It explained that courts of equity do not “enforce . . . every contract, in all cases, even where specific execution is found to be its legal intention and effect.” *Id.* at 317. Rather, they must exercise their “discretion” “in view of the circumstances of [each] case,” and a party’s “prayer for relief is not answered, where . . . the relief he seeks would be inequitable.” *Id.* (citations omitted).

Substantively, analysis for changed circumstances partakes of an equitable style in two important ways. *First*, inquiries surrounding changed circumstances tend to be fact-intensive and emphasize substance over form, a mode of analysis more closely associated with equity than with law. *See, e.g., Chesterfield Meadows Shopping Ctr. Assocs., L.P. v. Smith*, 568 S.E.2d 676, 680 (Va. 2002) (“The determination of the degree of change necessary . . . is inherently a fact-specific analysis in each case.”); *Hawthorne v. Realty Syndicate, Inc.*, 268 S.E.2d 494, 499 (N.C. 1980) (“Whether the growth and general development of an area represents such a substantial departure from the purposes of its original plan as equitably to warrant removal of restrictions formerly imposed is a matter to be decided in light of the specific circumstances of each case.”). As the Missouri Supreme Court stated in *Rombauer*, “[n]o hard and fast rule” exists “as to when

changed conditions have defeated the purpose of restrictions.” 40 S.W.2d at 553; *accord, e.g., Inabinet v. Booe*, 202 S.E.2d 643, 645 (S.C. 1974) (citing *Pitts v. Brown*, 54 S.E.2d 538, 543 (S.C. 1949)). And the Fourth Circuit has counseled that courts “should look to the substance—not the label—of the activity sought to be restricted. . . . A ‘drug store’ is no less a drug store merely because it has been incorporated into a structure called a ‘supermarket.’” *Providence Sq. Assocs., L.L.C. v. G.D.F., Inc.*, 211 F.3d 846, 851 (4th Cir. 2000) (footnote omitted).

Second, equitable doctrines and maxims like undue hardship and unclean hands are intertwined with the defense of changed circumstances. Specifically, as will be discussed in the next paragraph, courts generally require a showing of *hardship*, but hardship alone is insufficient; rather, the hardship must be *undue* in that there would be little to no benefit to the covenantee even if the covenant were enforced. *Circle Sq.*, 230 S.E.2d at 709. Furthermore, just as one cannot profit from his own wrong, the party invoking changed circumstances cannot itself have caused the change. *See 7 Thompson on Real Property, supra*, § 61.07(f)(1); *Thacher*, 87 N.Y. at 321.

“Equity will enforce restrictive covenants made for the benefit of an owner’s land if they remain of substantial value, even though because of changed conditions, a hardship will be visited on the servient estate.” *Circle Sq.*, 230 S.E.2d at 709; *accord, e.g., Cowling v. Colligan*, 312 S.W.2d 943, 946 (Tex. 1958). “The equities favoring the particular owner is only one facet of the judicial inquiry.” *Cowling*, 312 S.W.2d at 946. In other words, courts are focused on the *residual benefits* of the covenant, not merely on the hardship imposed. *See id.* Courts have explained that this is the case because “[t]he equitable principle of relative hardship is available only to innocent parties who proceed without knowledge or warning that they are acting contrary to others’ vested property rights.” *Gladstone v. Gregory*, 596 P.2d 491, 495 (Nev. 1979). And

generally speaking, every property owner violating a restrictive covenant has actual or constructive notice of the restrictions and thus knowingly proceeds despite such knowledge. *See, e.g., Cody v. Anthony Fabiano & Sons Inc.*, 667 N.Y.S.2d 446, 448 (App. Div. 1998). Such property owners are thus construed to have created their own hardship, rendering them ineligible for the equitable defense of changed circumstances. *See id.* (“When defendants acquired the property, they were not only on notice of the restrictive covenants, they were also on notice of the development’s configuration, the power company easement and their own surrounding mining operations; any hardship on their part was therefore self-created.”).

2. Enforceability or Termination?

Courts nearly universally refer to changed circumstances as an equitable defense to enforcement—or, alternatively but equivalently, as grounds for refusing to lend the aid of equity to one seeking the equitable enforcement of a restrictive covenant. *See, e.g., Thacher*, 87 N.Y. at 311; *Dunlap*, 122 S.E.2d at 15; *Shippan Point Ass’n, Inc. v. McManus*, 641 A.2d 144, 147 (Conn. App. Ct. 1994), *cert. denied*, 642 A.2d 1215 (Conn. 1994). At the same time, because changed circumstances is an *equitable* defense to enforcement, covenantees generally may still obtain a remedy at law. *See, e.g., Thacher*, 87 N.Y. at 319 (“They have established . . . a clear legal cause of action. If damages have been sustained, they must, in any proper action, be allowed.”); *Dunlap*, 122 S.E.2d at 15 (“[E]quity might refuse an injunction and remit a plaintiff to an action at law for damages.”).

In recent decades, courts have also allowed covenants to be terminated altogether due to changed circumstances, recognizing the doctrine as a basis for affirmative relief. *See, e.g., Dunlap*, 122 S.E.2d at 15–16. Alternatively stated, a covenantor may directly sue for the termination of a restrictive covenant. In *City of Bowie v. MIE Properties*, 922 A.2d 509 (Md. 2007), for example, after the City of Bowie sued MIE for a permanent injunction against its

alleged violation of a covenant, MIE counterclaimed for a declaratory judgment that the covenant was unenforceable due to changed circumstances. *Id.* at 518.

Some states require a higher standard for changed circumstances to be invoked affirmatively rather than defensively. For instance, the South Carolina Supreme Court observed that, because affirmative relief is much more “drastic” in that it results in the “extinguish[ment]” of the covenant, “much stronger proof” should be required of the party seeking termination “than in cases involving only injunctive relief.” *Dunlap*, 122 S.E.2d at 16. In addition, the party seeking termination may be required to pay damages in order to obtain termination. *Id.*

B. Frustration and Related Doctrines for Easements

1. Roots in Equity?

Analyses of cessation and impossibility do not appear to be equitable in style. Courts generally discuss the requirements of extinguishment without reference to any equitable principles, such as hardship. *See, e.g., Niedfeldt v. Evans*, 75 N.W.2d 307, 308–09 (Wis. 1956) (discussing cessation of purpose without any mention of equity).

It appears that only courts that have already adopted the *Third Restatement’s* unified approach reference equity when discussing the termination of easements on the grounds of impossibility. *See, e.g., Citizens Voices Ass’n v. Collings Lakes Civic Ass’n*, 934 A.2d 669, 677 (N.J. Super. Ct. App. Div. 2007) (citing *Restatement (Third) of Property: Servitudes* § 7.10(1) (Am. L. Inst. 2000)). Other courts, in fact, expressly reject equitable analysis in the context of easements. For example, the Wisconsin Supreme Court has stated that it was “longstanding precedent that Wisconsin courts do not balance the equities of adverse property owners when determining whether to grant or modify an easement.” *AKG Real Estate, LLC v. Kosterman*, 717 N.W.2d 835, 847 (Wis. 2006) (citations omitted).

However, courts have sometimes declined to grant termination due to the servient estate owner's bad-faith conduct, in an apparent analog to the unclean-hands dimension of changed circumstances. For example, in *Pitts v. Foster*, 743 So. 2d 1066 (Miss. Ct. App. 1999), the Mississippi Court of Appeals held that an easement by necessity to access a property did not terminate, where a governmental agency granted the dominant estate an alternative entry path because the servient estate owner had blocked the original easement, refusing to honor it. *Id.* at 1070. The court explained that, because "[t]he Pitts only sought alternative access to their land after Foster refused to be bound" by the original easement, "[t]o uphold the chancellor's ruling that the permit from the Forest Service terminates the easement by necessity would reward Foster for wrongly denying the Pitts' right to access to their land." *Id.*

2. Enforceability or Termination?

All of the cases found in the course of composing this memorandum have pertained to the termination of easements; at least in the context of cessation of purpose, cessation of necessity, and impossibility, no case was found that discusses the enforceability of an easement as a question separate from the continued existence of the easement.

However, easements may be suspended rather than outright terminated. *Powell on Real Property* takes the position that "[u]nder any of [the methods for terminating easements], the easement can be terminated in whole permanently, in whole for a time, in part permanently, or in part for a time." 4 *Powell on Real Property* § 34.18 (Michael Allan Wolf ed., 2023). The *First Restatement* explains that, for temporary terminations, "it is common usage to describe the easement as being suspended for the time during which the use privileged by it cannot be exercised." *Restatement (First) of Property* ch. 41 intro. note (Am. L. Inst. 1944). And C.J.S. *Easements* explains that "[u]nless recreated de novo, an easement is gone forever once extinguished, but a right which has been merely suspended may be revived." 28A C.J.S.

Easements, supra, § 141. It further discusses two scenarios in which easements should be suspended rather than simply terminated, but both are exceptions to the merger doctrine and so would not apply here. *See id.* § 145.

It is unclear what *de facto* difference there is, if any, between suspending an easement and temporarily enjoining its enforcement. Cases directly involving easement suspension are few and far between, even though suspension has long been discussed by courts. *See, e.g., Lowell v. City of Boston*, 79 N.E.2d 713 (Mass. 1948); *Kilmartin Realty, Inc. v. Silver Spring Realty Co.*, 155 A.2d 247 (R.I. 1959); *Mussey v. Proprietors of Union Wharf*, 41 Me. 34 (1856).

It appears that courts generally do not decline to enforce easements for any reason without terminating or suspending them. Searching for “adv: easement /s (decline OR refuse) /s enforce!” on Westlaw returned only 19 results across the entire United States for all time. Of these results, only one addressed the question of whether a court can decline to enforce an easement. There, the Tennessee Court of Appeals stated that “[c]ourts will . . . decline to enforce reciprocal negative easements where their purpose has been defeated by a radical change in the character of the neighborhood.” *Moore v. Phillips*, No. 01A01-9605-CH-00197, 1998 WL 272942, at *4 (Tenn. Ct. App. May 29, 1998) (citing *Hackett v. Steele*, 297 S.W.2d 63, 66 (Tenn. 1956)). But reciprocal negative easements are basically restrictive covenants, rather than easements *per se*, so this dictum is little surprise.

* * *

[Parts III and IV have been omitted from this excerpt.]

Applicant Details

First Name	Emily
Middle Initial	M.
Last Name	Erickson
Citizenship Status	U. S. Citizen
Email Address	eme2162@columbia.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>131 W. 119th St. #7</div> <div>City</div> <div>New York</div> <div>State/Territory</div> <div>New York</div> <div>Zip</div> <div>10026</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	5597975885

Applicant Education

BA/BS From	University of California-Los Angeles
Date of BA/BS	June 2018
JD/LLB From	Columbia University School of Law
	http://www.law.columbia.edu
Date of JD/LLB	May 22, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Columbia Law Review
Moot Court Experience	Yes
Moot Court Name(s)	Willem C. Vis International Arbitration Moot

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Specialized Work Experience	Appellate, Pro Se
--------------------------------	--------------------------

Recommenders

Bloom, Bryan
Bryan.Bloom@ag.ny.gov
Talley, Eric
etalley@law.columbia.edu
Mitts, Joshua
joshua.mitts@law.columbia.edu
212-854-7797

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Emily M. Erickson

131 W. 119th St. #7, New York, NY 10026
(559) 797-5885 | eme2162@columbia.edu

June 10, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am a rising third-year student at Columbia Law School, a James Kent Scholar, and a Managing Editor of the *Columbia Law Review*. I write to apply to a clerkship in your chambers for the 2025-26 term, or any term thereafter.

My work experience prior to and during law school has honed my analytical and writing abilities to the standard required of a circuit court clerk. As a jury consultant before law school, I attended a dozen trials to assist with jury selection. In that role, written analysis and quick problem-solving were at the core of my day-to-day role; in law school, and I have continued to develop these skills through journal work, as a moot court oralist and editor, and through externships in the New York Attorney General's Office and the U.S. Court of Appeals for the Ninth Circuit. These externships both expanded my legal analytical abilities and solidified my interest in devoting a portion of my career to public service. I thoroughly enjoyed my work as an extern in the Ninth Circuit, and that experience also motivates me to pursue a clerkship in a circuit court.

Enclosed please find a resume, law school transcript, undergraduate transcript, and one writing sample. Also enclosed are letters of recommendation from Professors Eric Talley (212-854-0437, etalley@law.columbia.edu); Joshua Mitts (212-854-7797, jmitts@law.columbia.edu); and Bryan Bloom (212-416-8598, bryan.bloom@ag.ny.gov). In addition, the Honorable John B. Owens of the U.S. Court of Appeals for the Ninth Circuit, for whom I externed in summer 2022, has agreed to serve as a reference (judge_owens@ca9.uscourts.gov).

Thank you for your consideration. Should you need additional information, please do not hesitate to contact me.

Respectfully,

Emily M. Erickson

EMILY M. ERICKSON

131 W. 119th Street, Apt. 7, New York, NY 10026 • (559) 797-5885 • eme2162@columbia.edu

EDUCATION

Columbia Law School, New York, NY

J.D. expected May 2024

Honors: James Kent Scholar (for outstanding academic achievement)

Activities: *Columbia Law Review*, Managing Editor
 Willem C. Vis International Commercial Arbitration Moot Court, Editor and Oralist
 Teaching Fellow: Corporations (Spring 2023), Methods of Persuasion (Jan. 2023)
 Research Assistant to Professor Eric Talley, Summer 2022
Journal of Gender and the Law, Staff Member, 2021–2022

Publication: Optimizing Fraud Deterrence by Locating Corporate Scierter in Corporate Design (forthcoming)

University of California, Los Angeles, Los Angeles, CA

B.A., in Business Economics, received June 2018

Activities: Kappa Alpha Pi Professional Pre-Law Fraternity, Executive Board

Study Abroad: International Economics, London School of Economics Summer Program, London, UK

EXPERIENCE

Quinn Emanuel Urquhart & Sullivan, LLP, New York, NY

Summer Associate

May – July 2023

Researching special hearsay issues related to police body-worn camera footage for a pro bono criminal case.

Drafting a motion to dismiss a securities fraud class action. Conducting fact research for unfair competition claims.

New York Office of the Attorney General, Antitrust Bureau, New York, NY

Intern

Sept. – Dec. 2022

Performed legal research and drafted memoranda related to antitrust damages in specific technology markets.

Drafted a mock jury presentation. Reviewed and commented on economic expert reports. Reviewed large document productions related to an investigation. Attended weekly bureau meetings.

U.S. Court of Appeals, Ninth Circuit, San Diego, CA

Extern to Judge John B. Owens

June – July 2022

Drafted bench memoranda providing analysis and recommendations regarding immigration and criminal appeals.

Drafted memorandum dispositions. Attended oral arguments before the Ninth Circuit. Discussed decisions and reasoning in chambers. Observed trial proceedings in federal district court.

Trial Behavior Consulting, Los Angeles, CA

Associate Consultant

Feb. 2020 – Aug. 2021

Research Associate

June 2018 – Jan. 2020

Assisted in court with jury selection and managed development of jury selection materials. Constructed arguments based on discovery materials for focus group testing. Conducted mock jury research, analyzed findings, and formulated trial strategy recommendations. Drafted memoranda regarding general litigation strategy. Presented research findings on the impact of COVID-19 on jury composition and related strategy considerations.

JusticeCorps, Los Angeles, CA

Legal Self-Help Intern

Sept. 2017 – June 2018

Explained essential property and custody issues to self-represented litigants in family law matters. Assisted with court forms. Received training in litigant interview techniques, issue spotting, and court procedures.

Law Offices of Greg S. Bernstein, Los Angeles, CA

Administrative Assistant

Mar. 2016 – Dec. 2016

Prepared contracts, corporate registrations, copyright filings and correspondence related to film production and distribution. Maintained files and attorney calendar. Provided general office administrative assistance.

INTERESTS: Weightlifting, movies, coffee



Registration Services

law.columbia.edu/registration
 435 West 116th Street, Box A-25
 New York, NY 10027
 T 212 854 2668
 registrar@law.columbia.edu

CLS TRANSCRIPT (Unofficial)

06/11/2023 21:53:15

Program: Juris Doctor

Emily M Erickson

Spring 2023

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6354-1	Drug Product Liability Litigation	Arnold, Keri; Grossi, Peter; O'Connor, Daphne	2.0	A
L6241-1	Evidence	Capra, Daniel	4.0	A
L6429-1	Federal Criminal Law	Richman, Daniel	3.0	A-
L6867-1	Independent Moot Court Coaching	Bernhardt, Sophia	1.0	CR
L6685-1	Serv-Unpaid Faculty Research Assistant	Genty, Philip M.	1.0	CR
L6683-1	Supervised Research Paper	Mitts, Joshua	1.0	A
L6822-1	Teaching Fellows	Genty, Philip M.	1.0	CR

Total Registered Points: 13.0**Total Earned Points: 13.0**

Fall 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L9502-1	Ex. NYS OAG Economics Law Enforcement: Antitrust	Bloom, Bryan L.; McFarlane, Amy	2.0	A
L9502-2	Ex. NYS OAG Economics Law Enforcement: Antitrust - Fieldwork	Bloom, Bryan L.; McFarlane, Amy	3.0	CR
L6867-1	Independent Moot Court Coaching	Bernhardt, Sophia	1.0	CR
L6169-1	Legislation and Regulation	Bulman-Pozen, Jessica	4.0	A
L6675-1	Major Writing Credit	Mitts, Joshua	0.0	CR
L6683-1	Supervised Research Paper	Mitts, Joshua	2.0	A

Total Registered Points: 12.0**Total Earned Points: 12.0**

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6133-2	Constitutional Law	Ponsa-Kraus, Christina D.	4.0	B+
L6231-1	Corporations	Talley, Eric	4.0	A
L6108-3	Criminal Law	Rakoff, Jed	3.0	A
L6121-36	Legal Practice Workshop II	Dimitrov, Delyan M.	1.0	HP
L6116-3	Property	Heller, Michael A.	4.0	A
L6871-1	Vienna Arbitration Moot Court		0.0	CR

Total Registered Points: 16.0

Total Earned Points: 16.0

January 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6130-4	Legal Methods II: Methods of Persuasion	Genty, Philip M.	1.0	CR

Total Registered Points: 1.0

Total Earned Points: 1.0

Fall 2021

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-3	Civil Procedure	Johnson, Olatunde C.A.	4.0	A
L6105-7	Contracts	Talley, Eric	4.0	A
L6113-1	Legal Methods	Ginsburg, Jane C.	1.0	CR
L6115-25	Legal Practice Workshop I	Newman, Mariana; Smith, Trisha	2.0	HP
L6118-2	Torts	Merrill, Thomas W.	4.0	B+

Total Registered Points: 15.0

Total Earned Points: 15.0

Total Registered JD Program Points: 57.0

Total Earned JD Program Points: 57.0

Honors and Prizes

Academic Year	Honor / Prize	Award Class
2022-23	James Kent Scholar	2L
2021-22	James Kent Scholar	1L

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University of California, Los Angeles
 UNDERGRADUATE Student Copy Transcript Report
 Missing Valid Seal

For Personal Use Only

This is an **unofficial/student copy** of an academic transcript and therefore does not contain the university seal and Registrar's signature. Students who attempt to alter or tamper with this document will be subject to disciplinary action, including possible dismissal, and prosecution permissible by law.

Student Information

Name: ERICKSON, EMILY M
 UCLA ID: 904428051
 Date of Birth: 05/22/XXXX
 Version: 08/2014 | SAITONE
 Generation Date: November 15, 2021 | 08:21:45 AM
 This output is generated only once per hour. Any data changes from this time will be reflected in 1 hour.

Program of Study

Admit Date: 09/29/2014
 COLLEGE OF LETTERS AND SCIENCE

Major:
 BUSINESS ECONOMICS

Minor:
 PHILOSOPHY

Degrees | Certificates Awarded

BACHELOR OF ARTS Awarded June 15, 2018
 in BUSINESS ECONOMICS
 With a Minor in PHILOSOPHY

Secondary School

FLOYD B BUCHANAN HIGH SCHOOL, June 2014

University Requirements

Entry Level Writing satisfied
 American History & Institutions satisfied

California Residence Status

Resident

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Transfer Credit

Institution

ADVANCED PLACEMENT

REEDLEY COLLEGE

1 Term to 10/2014 Psd 60.0

1 Term to 10/2014 6.0

Fall Quarter 2014

Major:

BIOCHEMISTRY

CHEM STRUCTURE-HNRS

Honors Content

CHEM 20AH 4.0 12.0 B

MAJOR AMER AUTHORS

ENGL 80 5.0 18.5 A-

INTRO HIST SCIENCE

HIST 3A 5.0 16.5 B+

Term Total Atm 14.0 Psd 14.0 Pts 47.0 GPA 3.357

Winter Quarter 2015

ENRGTC&CHANGE-HNRS

Honors Content

CHEM 20BH 4.0 10.8 B-

GENRL CHEMISTRY LAB

CHEM 20L 3.0 9.0 B

STATS-ECONOMISTS

ECON 41 4.0 13.2 B+

MOZART

MUS HST 62 5.0 20.0 A+

Term Total Atm 16.0 Psd 16.0 Pts 53.0 GPA 3.313

Spring Quarter 2015

ORGANIC CHEM I

CHEM 30A 4.0 9.2 C+

MICROECONOMC THEORY

ECON 11 4.0 13.2 B+

STEM CELL BIO&PLTCS

MCD BIO 50 5.0 18.5 A-

Term Total Atm 13.0 Psd 13.0 Pts 40.9 GPA 3.146

Fall Quarter 2015

MICROECONOMC THEORY

ECON 101 4.0 12.0 B

ACCOUNTING PRINCPLS

MGMT 1A 4.0 10.8 B-

SKEPTICISM&RATNALTY

PHILOS 21 5.0 18.5 A-

Term Total Atm 13.0 Psd 13.0 Pts 41.3 GPA 3.177

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Winter Quarter 2016

Major:
PREECONOMICS

GREAT BOOKS	COM LIT 4DW	5.0	16.5	B+
Writing Intensive				
ENVIRONMENTAL ECON	ECON M134	4.0	12.0	B
ACCOUNTING PRINCPLS	MGMT 1B	4.0	12.0	B
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	13.0	13.0	40.5	3.115

Spring Quarter 2016

MACRO ECON THEORY	ECON 102	4.0	16.0	A
GEOG INFO SYSTEMS	GEOG 7	5.0	16.5	B+
INTRO-ETHICAL THRY	PHILOS 22	5.0	0.0	P
INTR-RUSSIAN CVLZTN	RUSSN 90A	5.0	18.5	A-
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	19.0	19.0	51.0	3.643

Summer Sessions 2016

*** Education Abroad Program: LONDON SCHOOL ECON- ***

INTERNATIONAL ECON	ECON 151S	5.5	22.0	A
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
UC Transfer Credit	Term Total	5.5	22.0	4.000
	Term Total	0.0	0.0	0.000

Fall Quarter 2016

CAPITLSM-US ECONOMY	ECON 165	4.0	16.0	A
CAPTLSM-US ECON-LAB	ECON 165L	1.0	4.0	A
LOGIC-1ST CRSE	PHILOS 31	5.0	20.0	A
ELEMENTARY SPANISH	SPAN 3	4.0	0.0	P
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	14.0	14.0	40.0	4.000

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Winter Quarter 2017

Major:
ECONOMICS

BEHAVIORAL ECON	ECON 148	4.0	14.8	A-	
INDUS ORG-THRY&TCTC	ECON 170	4.0	16.0	A	
TRUTH-TELL&PROMISNG	PHILOS 153A	4.0	16.0	A	
Dean's Honors List					
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total		12.0	12.0	46.8	3.900

Spring Quarter 2017

ECONOMIC GROWTH	ECON 164	4.0	14.8	A-	
ECONOMIC GROWTH LAB	ECON 164L	1.0	3.7	A-	
LOGIC-SECOND COURSE	PHILOS 132	4.0	14.8	A-	
INTRO-AMERICN PLTCS	POL SCI 40	5.0	20.0	A	
Dean's Honors List					
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	14.0	14.0	53.3	3.807

Fall Quarter 2017

Major:
BUSINESS ECONOMICS

PRICING&STRATEGY	ECON 106P	4.0	12.0	B	
BUSINESS LAW	MGMT 108	4.0	16.0	A	
THEORY OF KNOWLEDGE	PHILOS 183	4.0	14.8	A-	
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
	Term Total	12.0	12.0	42.8	3.567

Winter Quarter 2018

INTRO-ECONOMETRICS	ECON 103	4.0	14.8	A-	
ECONOMETRICS LAB	ECON 103L	1.0	3.7	A-	
INTRO-METALOGIC	PHILOS 135	4.0	16.0	A	
PHILOSOPHY OF LAW	PHILOS 166	4.0	16.0	A+	
Dean's Honors List					
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	13.0	13.0	50.5	3.885	

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Spring Quarter 2018

INTRO-GAME THEORY	ECON 106G	4.0	14.8	A-
INTRO GAME THY LAB	ECON 106GL	1.0	4.0	A
WRTNG-BSNS&SOC PLCY	ENGCOMP 131B	4.0	14.8	A-
PHILOS-LANG&COMNCTN	PHILOS 172	4.0	16.0	A

Dean's Honors List

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	13.0	13.0	49.6	3.815

UNDERGRADUATE Totals

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
UC Transfer Credit Cumulative Total	5.5	5.5	22.0	N/a
Pass/No Pass Total	9.0	9.0	N/a	N/a
Graded Total	162.5	162.5	N/a	N/a
Cumulative Total	171.5	171.5	578.7	3.561
Total Non-UC Transfer Credit Accepted	66.0			
Total Completed Units	237.5			

END OF RECORD
NO ENTRIES BELOW THIS LINE

June 10, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

It is with great enthusiasm that I write to recommend Emily Erickson, Columbia Law '24, for a judicial clerkship. Emily was a top student in our NYAG Economic Justice seminar (which I co-teach with Amy McFarlane) during the Fall 2022 semester. The NYAG Economic Justice externship is a unique course that includes seven students from Columbia and seven students from NYU. We have interviews before accepting students, and the process is very selective. I also supervised Emily's fieldwork in the Antitrust Bureau of the NY Attorney General's office.

Emily is one of the top three students I have had the pleasure of working with over the past five years. In class, Emily was very engaged in our discussions, excelled in her trial advocacy skills, and presented a complex antitrust analysis succinctly and persuasively. During her fieldwork, Emily demonstrated very advanced research and writing skills. In addition, she analyzed a complicated Supreme Court decision, and provided critical insights to our team.

Emily has a unique ability to analyze novel issues and explain them clearly and succinctly both orally and through her writing. She also worked very well with her colleagues and received excellent feedback from all the AAGs she worked with.

Emily is the type of student that makes working as an adjunct so rewarding—seeing her excitement to learn a new area of law and apply her skills in our office environment. Emily's legal abilities were very valuable to our office, and her presence in class was a huge bonus for our seminar.

Beyond her substantive abilities, she is also excellent in an office environment—going above and beyond on assignments, working well in teams, and always maintaining a very positive attitude. I would highly recommend hiring Emily to anyone. However, I think her skills will be particularly valuable as a law clerk in a judge's chambers because she is collegial, hardworking, humble, and open-minded: qualities that are critical to promoting a well-functioning chambers and courtroom. She will quickly become a go-to person for you and her law clerk peers. I recommend her without reservation.

If you have any questions about Emily, please feel free to reach out to me at Bryan.Bloom@ag.ny.gov or 212-416-8598.

Best,

Bryan Bloom

Bryan Bloom - Bryan.Bloom@ag.ny.gov

June 10, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

It is with tremendous pleasure and enthusiasm that I write to recommend Ms. Emily Erickson, a 2024 JD candidate at Columbia Law School, in connection with her application for a judicial clerkship in your chambers. I have known Ms. Erickson for approximately two years, and I have interacted with her in several capacities during that time. Although I will provide additional details about those interactions below (and what I draw from them), they all point inexorably to the same bottom line: Emily is already a fantastic student, and she is destined to be a terrific lawyer and a fantastic clerk. She is exceptionally thoughtful, intelligent, creative and personable. Her writing is superb. I recommend her highly, with no reservations.

I first became acquainted with Ms. Erickson when she was assigned (randomly) to my small section of Contracts in the Fall of 2021. As you well know, contract law is a foundations course in nearly every law school (including Columbia), and success in the course is a particularly salient benchmark for future performance. You are also probably aware from reading her transcript that she performed exceptionally well in the class, earning an A for the course having written an extremely strong exam (the third highest raw score for the class, and neck-and-neck with the top exam). What does not jump out from these aggregate statistics is the depth of her engagement and several interventions throughout the term. Emily possesses a keen ability to unearth the most important aspects of a case, both for doctrinal and/or policy purposes, and to push everyone (her professor included) to dig deeper. It was a delight to see her engage in the subject matter and to engage others.

The ink was barely dry on Emily's contracts grade when she popped up again in my Corporate Law class in the Spring of 2022. This is a very challenging (and very large) course, and I confront students not only a significant dose of statutory and doctrinal material, but also a relatively sizable dollop of organizational theory, economics, corporate finance and accounting. Beyond statutes and doctrine, they are expected to become conversant in (and understand criticisms of) the ideas of Coase, Hayek, Williamson, and Friedman, all the while mastering basic accounting and valuation concepts. Emily was game for the task, once again asking excellent questions, responding exceptionally well to cold calls, and making frequent visits to office hours with interesting follow-up questions and reflections. I expected much from her on the exam, and she fully delivered: her final grade for the class was (once again) an "A", and her exam was (once again) among the top submissions in the 120-person class. As I reviewed Ms. Erickson's exam answer for purposes of writing this letter, I am (once again) struck by her strong writing skills—her lucid and well-reasoned written answers scored nearly the highest in the class on that portion of the exam (though her exam was very strong across all components).

When the semester concluded, I approached Emily in an attempt to recruit her to become a research assistant in a significant project in empirical corporate governance comparing the governance systems of venture-backed startups as correlated with the gender of the founder teams. This is an issue that has significant policy implications, and the project required wading through the corporate governance documents of more than a thousand startups, coding them using a detailed rubric that we jointly developed for assessing the division of cash flow and control rights between venture capital investors and founders. The work was difficult, and doing it right required a lawyer's (or soon-to-be-lawyer's) eye for detail and nuance in corporate governance. Emily was exceptionally strong in this capacity, and she quickly proved to be one of my most capable and reliable research assistants. The project will soon be published, and it simply could not have been produced without her help.

But there's more. I was so happy with Emily's performance as both a student (twice) and a research assistant that I asked her to become a teaching assistant for my Spring 2023 Corporations class. The term has just finished and the feedback that I have received about Emily has been (unsurprisingly) very strong. The students in the class view her as a "go to" TA for difficult questions and doctrinal puzzles, and the presentation slides she has put together for discussion sessions have been so strong as to need literally no editing by me. I'm ecstatic with the work she has done, and I very much hope to see her in my advanced business law classes next year. Perhaps more amazing than this is the fact that Emily has balanced a time consuming teaching assistant job with becoming a Columbia Law Review editor this term—a prestigious position to be sure, but one that also can be all consuming. She seems to be able to do it all. (I would also encourage you to read Emily's terrific student note on organizational science; not only is this an immensely important topic but she takes it on with a care and thoroughness that will likely make it a useful reference for practitioners and academics alike.)

Let me close with a few words about Ms. Erickson as a person. Although she has obvious talents as a lawyer and clerk, she is also far more than that. I can confidently say that Emily is, without a doubt, an enormously well rounded and likable person. Her fellow classmates and her students obviously have a deep respect for her, and so have all the faculty who have interacted with her. I think her combination of skills and personality will translate not only into being a sharp thinker and dependable clerk, but you and the rest of your staff will grow to like her immensely.

I end where I started: Emily Erickson has my strongest recommendation with no reservations whatsoever. Interview her, and you will immediately see what I mean.

If you have any questions about this exceptional candidate, please do not hesitate to contact me at the email address and telephone number above.

Eric Talley - etalley@law.columbia.edu

Sincerely,

Eric L. Talley
Sulzbacher Professor of Law

Eric Talley - etalley@law.columbia.edu

June 10, 2023

The Honorable John Walker, Jr.
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am writing to strongly and enthusiastically recommend Emily Erickson for a clerkship in your Chambers. I have had the pleasure of getting to know Emily over the past academic year and I am utterly confident that she deserves my unqualified recommendation.

I first met Emily when I had the pleasure of supervising her note. She chose a fascinating and challenging topic on optimizing fraud deterrence by locating corporate scienter in corporate design, which has been selected for publication in the Columbia Law Review. This article makes a substantial contribution to the literature by anchoring corporate scienter in the deterrence goals of the securities fraud regime. This is critically important to the practice of securities law because attributing intent to defraud to an organization is both conceptually and practically difficult, yet it is what the law demands. Emily's writing is crisp, cogent and deftly tackles the nuances of the topic with the care and persuasion of a practiced litigator.

Indeed, when reading Emily's work, one comes away with the distinct impression that she has been doing this for years. It came as no surprise to me that her article was chosen for publication. It is an obvious academic contribution to the scholarly literature. But it is more than that: it is practice-relevant as well. It is no small feat to write a piece which is both analytically sophisticated and serves as a roadmap for members of the bar and bench who are forced to consider questions of corporate scienter in the day-to-day practice of securities litigation and enforcement.

Aside from her obvious legal aptitude, one aspect of Emily that really stands out is the breadth and depth of her intellectual interests. She has done sterling work as the Managing Editor at the Columbia Law Review and in our conversations outside of the classroom she has consistently impressed me with her interest in litigation more generally. Her work experience before coming to Columbia and her studies since then have produced a young lawyer with a rigorously analytical mind as well as one focused on addressing contemporary issues through the law. It gives me great pleasure to write this letter as I have no doubt that she will be a star in this role and I support her application wholeheartedly. This would be an incredible role for her and if you take her on as a clerk I guarantee that you will not regret it.

If I can be of assistance in any way as you consider this very strong applicant, please don't hesitate to call or email me.

Sincerely,

Joshua Mitts
Professor of Law

Joshua Mitts - joshua.mitts@law.columbia.edu - 212-854-7797

EMILY M. ERICKSON

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Writing Sample

I prepared the following bench memorandum during my 1L summer as an extern in the chambers of the Honorable John B. Owens of the U.S. Court of Appeals for the Ninth Circuit. The memo concerns an appeal from the denial of a *Batson* motion in a criminal trial. A clerk provided comments that have been incorporated in this version of the memo; no one other than myself has made direct edits. In order to maintain confidentiality, I have redacted certain details. I have also made edits for length, including removing citations to the appellate record and trial audio. This memo is being used with the permission of Judge Owens.

BENCH MEMORANDUM

TO: [Redacted]
FROM: Emily Erickson
RE: [Redacted case name and number]
DATE: [Redacted]

Argument Date: [Redacted]
Appeal From: [Redacted]
Jurisdiction Below: 18 U.S.C. § 3231
Jurisdiction on Appeal: 28 U.S.C. § 1291
Notice of Appeal: [Date redacted] (timely)
Nature: Criminal
Weight: [Redacted]
Recommendation: **AFFIRM**

OVERVIEW

Defendant [name redacted, hereinafter “Defendant”] appeals from the district court’s order denying Defendant’s *Batson* motion. Defendant previously appealed his conviction and sentence for attempted persuasion, inducement, or enticement of a minor in violation of 18 U.S.C. § 2422(b) in 2020. In that first appeal, this court vacated the district court’s denial of Defendant’s *Batson* motion and remanded with instructions to conduct a new trial only if the district court ultimately found purposeful discrimination.

On remand, the district court affirmatively determined that Defendant did not meet his burden of establishing that the government engaged in purposeful discrimination and again denied the *Batson* motion. Defendant challenges this denial on two grounds: (1) that the district court improperly considered the government’s post hoc justifications for its strikes, and (2) that the district court improperly relied on its impressions of the prosecutor formed based on unrelated appearances prior to this trial.

I recommend that the panel affirm the denial of the *Batson* motion.

BACKGROUND

The facts underlying this criminal case arose in October 2017, when Defendant responded to a Craigslist advertisement created by an FBI agent. This advertisement, posted in Craigslist’s “women seeking men” section, indicated a mother and daughter were looking for “taboo experiences” and to “live out fantasies.” Posing as the mother, the agent informed Defendant that her “daughter” was 14 years old. Defendant proceeded to exchange sexually

graphic messages with the “daughter” (but really, the FBI agent). Defendant planned to meet the “daughter” at an apartment in Kihei, Hawaii and was arrested upon his arrival at the apartment.

Defendant was charged with one count of violating 18 U.S.C. § 2422(b). The case went to trial in February 2020.

During jury selection, prospective jurors took turns answering court-provided prompts regarding their family, work, and living situations. Each juror also answered the court’s follow-up questions and any posed by the parties.

The current appeal centers on Juror 14. The transcript of Juror 14’s voir dire comments is as follows:

Juror 14: Howzit.¹ My name is [redacted]. I lived here for about 28 years. I’m a fish handler, packager. I’m not retired. Single. No more kids. And I live with a bunch of people.

The Court: Okay. I was kind of, like, worried about making you tell me what they do. How many other people?

Juror 14: Twenty.

The Court: Okay. Nevermind then.

Juror 14: Yeah. Oh, I live in Wahiawa.

The accompanying audio recording indicates Juror 14 chuckled briefly after saying his name. The court and others present laughed after Juror 14 indicated he lives with “a bunch of people.” There was more laughter after the court said she was worried about making him tell her what his roommates do and after the court said “nevermind.”

The government exercised all seven of its peremptory strikes against men. After striking concluded, Defendant made his motion under *Batson v. Kentucky*, 476 U.S. 79 (1986) alleging

¹ “Howzit” is a contraction of “How is it” and is commonly used as an informal greeting in Hawaii.

gender-based discrimination. Defendant pointed out that the government had struck only men, which the government acknowledged. The government explained it struck Juror 14 “based in part on an answer that he had where he made sort of a flippant comment, somewhat similar to the other gentleman that made a comment about I don’t do that crap.”² I can’t recall what [Juror 14’s] comment was, but it was a little flippant.” Defendant argued that the government had not “given sufficient reasons to overcome that [the strike] was gender-motivated” and urged that explanations related to “vague body language, or vague gestures, or vague looks” were insufficient reasons to overcome a prima facie showing of discrimination in the *Batson* context.

The district court rejected the *Batson* challenge, explaining that Defendant’s counsel “may be thinking that [the government] have the burden to do more to overcome the *Batson* challenge . . . than I think the law requires.”

Later that day, after jury selection, the district court requested the government “amplify” its reasons for its peremptory strikes in a written submission. In its amplification, the government indicated it struck Juror 14 “based on his demeanor and body language, appearing disengaged during voir dire, crossing his arms throughout the proceedings, at one point providing an answer that made the other jurors laugh and appearing not to take the proceedings seriously.”

At the conclusion of the trial, the jury convicted Defendant of violating § 2422(b), and the court sentenced Defendant to the mandatory minimum term of ten years’ imprisonment, followed by ten years’ supervised release.

² The government appears to be referring to Juror 4, a male juror who referred to websites like Craigslist and Gmail as “crap” when the prosecutor asked if he was familiar with them.

Defendant timely appealed his conviction. In the first appeal, this court vacated the denial of the *Batson* motion, holding the district court's determination that the government's proffered explanations were "sufficient" did not amount to "a clear record that the trial court made a deliberate decision on the ultimate question of purposeful discrimination" as required under *United States v. Alanis*, 335 F.3d 965 (9th Cir. 2003). This court remanded to the district court with directions to hold a new trial only if the district court determined there was a *Batson* violation.

On remand, the district court again denied the *Batson* motion. Limiting its review to the government's oral explanations at sidebar and excluding its written amplifications, the district court determined that the government's reasons for its peremptory strikes were credible and that Defendant failed to establish the government engaged in purposeful discrimination. Specifically, the district court found that the government's explanation that it struck Juror 14 because of his "flippant comment" and demeanor was credible and consistent with the court's impression. The court further explained that the prosecutor presenting the bases for cause challenges was "sincere and forthcoming" based on the court's observations during jury selection in this trial and in her prior appearances before the district court.

This timely appeal followed.

STANDARD OF REVIEW

This court "review[s] de novo whether the district court properly applied *Batson*." *United States v. Alvarez-Ulloa*, 784 F.3d 558, 565 (9th Cir. 2015). When "[f]aced with an improper application of the *Batson* framework, [this court] may decide de novo whether the government's strikes were motivated by purposeful discrimination" or "remand to the district court." *Id.* at 565–66. If the district court properly applied the *Batson* framework, this court

“review[s] the district court’s ruling on a *Batson* challenge for clear error.” *United States v. Mikhel*, 889 F.3d 1003, 1028 (9th Cir. 2018); see *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008).

DISCUSSION

“Purposeful racial discrimination in selection of the venire violates a Defendant’s right to equal protection because it denies him the protection that a trial by jury is intended to secure.”

Batson v. Kentucky, 476 U.S. 79, 86 (1986). The Supreme Court extended this holding to gender-based discrimination in *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 129 (1994). Courts employ a three-step framework to evaluate claims of gender discrimination under *Batson* and *J.E.B.*:

First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of [gender]. Second, if that showing has been made, the prosecution must offer a [gender]-neutral basis for striking the juror in question. Third, in light of the parties’ submissions, the trial court must determine whether the defendant has shown purposeful discrimination.

Alvarez-Ulloa, 784 F.3d at 565 (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 328–29 (2003)).

The district court’s consideration on remand and the current appeal are limited to step three. In step three, “a court must undertake a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” *Batson*, 476 U.S. at 93 (internal quotation marks and citation omitted). To aid this inquiry, “defendants may present:

- statistical evidence about the prosecutor’s use of peremptory strikes against [male] prospective jurors as compared to [female] prospective jurors in the case;
- evidence of a prosecutor’s disparate questioning and investigation of [male] and [female] prospective jurors in the case;
- side-by-side comparisons of [male] prospective jurors who were struck and [female] prospective jurors who were not struck in the case;
- a prosecutor’s misrepresentations of the record when defending the strikes during the *Batson* hearing;
- relevant history of the State’s peremptory strikes in past cases; or
- other relevant circumstances that bear upon the issue of racial discrimination.

Flowers v. Mississippi, 139 S. Ct. 2228, 2243 (2019). “[T]hese factors [are] to be considered holistically, based on ‘all of the relevant facts and circumstances.’” *Ervin v. Davis*, 12 F.4th 1102, 1107 (9th Cir. 2021) (quoting *Flowers*, 139 S. Ct. at 2251).

Defendant asserts two general challenges to the district court’s order on remand. He claims the district court erred by (1) improperly considering the government’s “amplified” explanation for striking Juror 14 and (2) relying on personal impressions of the prosecutor when evaluating her credibility.

I. The District Court Did Not Err Because It Did Not Rely on the Government’s Post Hoc “Amplifications.”

Defendant argues that the district court “erred to the extent that it strayed from the government’s stated reason during jury selection for striking Juror 14” and considered the government’s amplified reasons for the strike. He explains that “when illegitimate grounds like [gender] are in issue, a prosecutor simply has got to state [her] reasons as best [she] can and stand or fall on the plausibility of the reasons [she] gives.” (quoting *Miller-El v. Dretke*, 545 U.S. 231, 252 (2005) [hereinafter *Miller-El II*]).

There is a potentially relevant distinction between post hoc explanations that supplement a prior explanation as opposed to those that replace an explanation determined to be invalid. In *Miller-El II*, the Supreme Court criticized a prosecutor’s “pretextual timing” when he offered an additional, unrelated reason for a strike after it was shown he critically misstated the juror’s voir dire testimony. 545 U.S. at 246. There is no binding precedent as to whether a trial court may consider *supplemental* reasons provided after the initial explanation, as opposed to the *replacement* reason at issue in *Miller-El II*. But the Fifth and Seventh Circuits have both interpreted *Miller-El II* to prohibit consideration of supplemental reasons added after the fact.

United States v. Taylor, 636 F.3d 901, 905 (7th Cir. 2011) (“*Miller-El II* instructs that when ruling on a *Batson* challenge, the trial court should consider only the reasons initially given to support the challenged strike, not additional reasons offered after the fact.”); *Chamberlin v. Fisher*, 885 F.3d 832, 841–42 (5th Cir. 2018) (“*Miller-El II*’s ‘stand or fall’ requirement applies to this situation, blocking such post hoc rationalizations.”).

While considering the government’s post hoc amplifications likely would have been improper, the district court does not appear to have done so here. Defendant argues that, even though the district court indicated it would not consider the government’s amplifications, it nonetheless discussed Juror 14’s “demeanor and attitude, tone, and words, the laughter during the court’s bantering exchange with him, and the concern that he would not take the case seriously, which are all things readily found in the government’s amplified reasons for striking Juror 14.” (internal quotation marks omitted). The district court did discuss Juror 14’s demeanor, words, tone, and the reactions they elicited, but as this court recognized in its disposition of the first appeal, “[t]he government’s explanation for striking Juror 14 centers on his demeanor.” It would be impossible for the district court to assess whether Juror 14’s comments could be credibly described as “flippant” without assessing intangible qualities like his demeanor. *See Briggs v. Grounds*, 682 F.3d 1165, 1178 (9th Cir. 2012) (describing flippancy as a “demeanor-based reason[.]”); *see also Snyder v. Louisiana*, 552 U.S. 472, 477 (2008). The district court did not address the reasons stated in the amplification unrelated to those given at sidebar, like Juror 14 crossing his arms or appearing disengaged.

Therefore, the district court did not err because it did not consider the government’s amplifications.

II. The District Court Probably Did Not Err by Considering Its Impressions of the Prosecutor Formed in Prior Appearances.

In denying Defendant's *Batson* challenge, the district court judge reflected on her observations of the prosecutor during Defendant's trial as well as her prior, in-court encounters with the same prosecutor. Defendant argues that the district court erred by considering her personal assessment of the prosecutor formed based on prior appearances.

The *Batson* analysis is not necessarily limited to the case before the trial court. The Supreme Court has indicated that "although some false reasons are shown up within the four corners of a given case, sometimes a court may not be sure unless it looks beyond the case at hand." *Miller-El II*, 545 U.S. at 240. The Court incorporated this permission to look beyond the present case in *Flowers* through its catch-all factor directing courts to consider "other relevant circumstances." 139 S. Ct. at 2243. The Court further explained, "*Batson* did not preclude defendants from still using the same kinds of historical evidence [showing a pattern of excluding jurors based on race] that *Swain* had allowed defendants to use to support a claim of racial discrimination." *Id.* at 2245.

There is no binding precedent as to whether the trial court may consider its impressions of attorneys formed in other cases to inform its *Batson* analysis, but the Seventh Circuit has held that it may. *United States v. Williams*, 934 F.2d 847, 850 (7th Cir. 1991); *see also, e.g., United States v. Cooper*, 19 F.3d 1154, 1162 (7th Cir. 1994). In *Williams*, "the trial judge considered his prior experience with the same prosecutor" in making "his credibility determination that the prosecution's race-neutral explanation was not pretextual." 934 F.2d at 850. Specifically, the trial judge recalled a prior case involving one of the same prosecutors tried by a majority-Black jury. *Id.* The Seventh Circuit held "that a trial judge may take into consideration a prior pattern or practice of jury selection made by a particular prosecutor as part of the analysis of the

credibility of the prosecutor’s reasons for exclusion of venire members.” *Id.* Allowing the trial judge to consider “his prior dealing with the same prosecutor” was “[c]onsistent with acknowledging the trial judge’s special vantage point” to assess credibility. *Id.* at 850–51; *see Snyder*, 552 U.S. at 477. But the Seventh Circuit cautioned that “the trial judge should not rely solely on prior practice but should also evaluate the circumstances presented in the particular case at hand.” *Williams*, 934 F.2d at 850.

There is, however, a meaningful factual distinction between *Williams* and the present case. Here, the district court did not discuss any specific prior juries or jury selections involving the same prosecutor. *Contra Williams*, 934 F.2d at 850.³ She discussed only one specific prior appearance, a trial in which she “repeatedly expressed concern” about the government’s handling of the case, although she emphasized her concern in that case was “never even close to being about duplicity, pretext, or discrimination on the part of [this prosecutor].” Instead of relying on this or any other specific recollections, the district court ultimately bolstered the credibility determination by reference to “overarching impressions of [the prosecutor], gathered over a period of years.”

Applying the *Williams* rule in this case would thus require taking the Seventh Circuit’s reasoning one step further, allowing trial judges to rely not only on specific recollections of prior jury selections that are made part of the record but also on “overarching impressions” formed in potentially unrelated contexts. This could be permissible under the *Flowers* catch-all factor if the district court’s overall impression of the striking attorney’s credibility is a “relevant circumstance[] that bear[s] on the issue of [gender] discrimination.” *Flowers*, 139 S. Ct. at 2243;

³ While *Cooper* affirmed the trial court’s reference to “his prior experiences with the government prosecutors,” in context those “experiences” also seemed limited to “patterns and practices . . . during prior jury selections.” 19 F.3d at 1162.

accord Ervin, 12 F.4th at 1107. Moreover, applying the *Williams* rule here is consistent with the premise that trial judges are in the best position to assess the striking attorney’s discriminatory intent. *See, e.g., Hernandez v. New York*, 500 U.S. 352, 365 (1991); *Snyder*, 552 U.S. at 477; *Batson*, 476 U.S. at 98 n.21. These cases emphasize that “determinations of credibility and demeanor lie peculiarly within a trial judge’s province” precisely because their bases are generally not reflected in the record but are perceived by the trial judge. *Snyder*, 552 U.S. at 477 (internal quotation marks and citation omitted).

The thrust of Defendant’s counterargument is that allowing trial judges to rely on personal recollections impermissibly looks beyond objectively verifiable evidence and makes the judge a witness whose credibility cannot be meaningfully challenged or reviewed. But the weight of precedent does not support this position. The cases Defendant cites involved factual disputes that required the respective judges to rely on the record only.⁴ By contrast, trial judges assessing purposeful discrimination in the *Batson* context *must* look outside the record, for example, to evaluate the striking attorney’s demeanor. *See Snyder*, 552 U.S. at 477 (citing *Hernandez*, 500 U.S. at 365). While Defendant’s point that trial courts’ credibility determinations are difficult to challenge and review is not incorrect, this limitation is inherent in the *Batson* framework and is the reason appellate courts are generally highly deferential to the trial court’s step three findings. *See id.* Allowing trial judges to consider explicitly relevant impressions of the attorneys they encounter in their courtrooms as one factor in the purposeful

⁴ *See United States v. Berber-Tinoco*, 510 F.3d 1083, 1090–91 (9th Cir. 2007) (reversing where judge relied on personal knowledge of traffic stop location); *Buffalo v. Sunn*, 854 F.2d 1158, 1165 (9th Cir. 1988) (reversing where judge used personal knowledge of state prisons to resolve a factual conflict); *In re Murchison*, 349 U.S. 133, 138 (1955) (reversing where judge relied on his recollection of grand jury sessions when presiding over the trial based on his own indictments); *Scott v. Estelle*, 567 F.2d 632, 663–664 (5th Cir. 1978) (reversing where judge relied on out-of-court communication with defense attorney to deny habeas petition).

discrimination analysis does not decrease the reliability of trial courts' intangible analyses in the first instance. While it might be a different circumstance if a judge relied on an impression based on personal or working relationships formed outside the roles of judge and counsel, reliance on impressions of attorneys formed based on court appearances does not present the same potential problems of, e.g., personal bias. This is especially true here, where the judge's impression was supported by many details specific to the present case.

The district court's evaluation of the prosecutor's credibility formed over time was thus likely an acceptable factor bearing on the assessment of purposeful discrimination under *Flowers*. The district court discussed prior experience with this prosecutor to bolster its determination based on the prosecutor's demeanor during Defendant's trial and the other factors bearing on the step three inquiry. The district court emphasized its prior impression of the prosecutor was "a factor" in its determination and that it was "not saying that it will automatically believe or accept everything this prosecutor . . . says." *Flowers*' directive to consider "other relevant circumstances," the Seventh Circuit's reasoning in *Williams*, and the nature of the *Batson* credibility assessment support this type of holistic inquiry.

Therefore, it was probably not error for the district judge to rely in part on her subjective impressions of the prosecutor formed outside of Defendant's trial.

CONCLUSION

For the foregoing reasons, I recommend that the panel affirm.

Applicant Details

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 Last Name **Fann**
 Citizenship Status **U. S. Citizen**
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Zip
94028
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Contact Phone Number **6502697607**

Applicant Education

BA/BS From **Pomona College**
 Date of BA/BS **May 2021**
 JD/LLB From **Stanford University Law School**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=90515&yr=2011
 Date of JD/LLB **June 16, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Stanford Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

HUTCHINSON FANN
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June 12, 2023

The Honorable John M. Walker, Jr.
United States Court of Appeals for the Second Circuit
Connecticut Financial Center
157 Church Street, 17th Floor
New Haven, CT 06510-2100

Dear Judge Walker:

I am a rising third-year student at Stanford Law School and write to apply to serve as your law clerk in 2025-26. I am interested in criminal law and legal academia, so I would be eager to learn from your experience as an Assistant United States Attorney and law professor. I plan to spend my career in New York City, and I would enjoy living in New Haven during the clerkship.

Enclosed please find my resume, references, law school transcript, and writing sample for your review. Professor Buzz Thompson, Professor Lawrence M. Friedman, and Professor Robert Weisberg are providing letters of recommendation in support of my application.

I welcome the opportunity to discuss my qualifications further. Thank you for your consideration.

Sincerely,

Hutchinson Fann

HUTCHINSON FANN

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EDUCATION

Stanford Law School

Stanford, CA

J.D., expected June 2024

Journal: *Stanford Law Review* (Vol. 76: Online Editor; Vol. 75: Member Editor); Award for Outstanding Member Editor Team (Vol. 75)

Activities: Research Assistant to Lawrence M. Friedman and Buzz Thompson; Asian and Pacific Islander Law Students Association; Native Law Pro Bono; William A. Ingram Inn of Court (Pupil)

Pomona College

Claremont, CA

B.A., *magna cum laude*, in Philosophy, Politics, and Economics (PPE), May 2021

Honors: Downing Scholarship recipient (full merit scholarship for MPhil at the University of Cambridge); Phi Beta Kappa (elected in 2020); Distinction in the Senior Exercise; Pomona College Scholar; Level II musical performer (highest level); Pomona College Humanities Studio (Fellow)

Activities: Taught English at a local mosque, Classical Guitar Quartet, Academic Affairs Committee

University of Oxford, St. Edmund Hall, Visiting Student, Politics, 2019-20

Oxford, United Kingdom

EXPERIENCE

Holwell Shuster & Goldberg LLP, New York, NY

Summer Associate, Aug. – Sept. 2023

Sullivan & Cromwell LLP, New York, NY

Summer Associate, June – Aug. 2023

U.S. Department of Justice, Criminal Appellate Section, Washington, D.C.

Legal Intern (Spring 2023)

Drafted the government's brief in opposition to a petition for certiorari in the U.S. Supreme Court. Drafted sections of briefs for cases in the U.S. Courts of Appeals. Reviewed court decisions adverse to the United States and drafted memos to the Solicitor General about whether the government should appeal.

Stanford Law School

Stanford, CA

Professor Lawrence M. Friedman

Research Assistant, Nov. 2022 – present

Co-authoring an article on the newspaper coverage of abortion in the late nineteenth century. Also assisted with a forthcoming book, an article on the history of workers' compensation, and an article on the history of abortion in the United States.

Professor Buzz Thompson

Research Assistant, Sept. 2022 – present

Co-authoring an article on the impact of California's statutory human right to water. Assisted with a forthcoming book on the business of water.

Independent Research: "The Effect of Enforcement of Gratuitous Promises"

Sept. 2022 – present

Received funding from Stanford to conduct original research into how the legal enforcement of promises impacts the utility of the receiver of the promise. Supervised by Professor Julian Nyarko.

King & Spalding, New York, NY

Summer Associate, June – Aug. 2022

Drafted part of a motion to dismiss and prepared legal memoranda on a breach of contract, force majeure, and new international arbitration rules, among other topics. Received an offer to return during summer 2023.

Oxford Review of Books, Oxford, UK

Commissioning Editor, Apr. 2020 – Mar. 2021

Reviewed proposals for publication; worked with writers for both print and online publication.

Professor Amanda Hollis-Brusky, Pomona College

Research Assistant, Jan. 2018 – May 2019

Assisted with the book *Separate but Faithful* (Oxford University Press, 2020). Received acknowledgement in the book and cited for coining a term used in the book. Wrote and presented two spin-off articles at Western Political Science Association conferences (see below).

Office of U.S. Senator Dianne Feinstein (D-CA), San Francisco, CA

Intern, May – July 2019

Interests: Spanish (proficient speaker and writer), classical guitar, comparative religion, podcasting

HUTCHINSON FANN

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PUBLICATIONS AND PRESENTATIONS

“The Libertarian and Conservative Christian Divide on Natural Law and Natural Rights,” Western Political Science Association (undergraduate panel), 2021

“Natural Law and Christian Worldview Institutions,” Western Political Science Association (undergraduate panel), 2020

“Perspectives: Stuttering,” KQED, a National Public Radio (NPR) member radio station, 2017

TEDxUCLA, classical guitar, 2017

RECOMMENDERS

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Law Unofficial Transcript

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Name : Fann,Hutchinson
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Print Date: 04/24/2023

----- Academic Program -----

Program : Law JD
09/20/2021 : Law (JD)
Plan
Status Active in Program

----- Beginning of Academic Record -----

2021-2022 Autumn

Course	Title	Attempted	Earned	Grade	Equiv
LAW 201	CIVIL PROCEDURE I	5.00	5.00	H	
Instructor:	Zambrano, Diego Alberto				
LAW 205	CONTRACTS	5.00	5.00	P	
Instructor:	Nyarko, Julian				
LAW 219	LEGAL RESEARCH AND WRITING	2.00	2.00	H	
Instructor:	Handler, Nicholas A				
LAW 223	TORTS	5.00	5.00	H	
Instructor:	Mello, Michelle Marie Studdert, David M				
LAW 240J	DISCUSSION (1L): RELIGION, IDENTITY AND LAW	1.00	1.00	MP	
Instructor:	Sonne, James Andrew				
LAW TERM UNTS:	18.00	LAW CUM UNTS:	18.00		

2021-2022 Winter

Course	Title	Attempted	Earned	Grade	Equiv
LAW 203	CONSTITUTIONAL LAW	3.00	3.00	H	
Instructor:	Meyler, Bernadette				
LAW 207	CRIMINAL LAW	4.00	4.00	H	
Instructor:	Weisberg, Robert				
LAW 224A	FEDERAL LITIGATION IN A GLOBAL CONTEXT: COURSEWORK	2.00	2.00	P	
Instructor:	Thesing, Alicia Ellen				
LAW 4018	INTELLECTUAL PROPERTY: INTERNATIONAL AND COMPARATIVE COPYRIGHT	2.00	2.00	P	
Instructor:	Goldstein, Paul L				
LAW TERM UNTS:	11.00	LAW CUM UNTS:	29.00		

2021-2022 Spring

Course	Title	Attempted	Earned	Grade	Equiv
LAW 217	PROPERTY	4.00	4.00	H	
Instructor:	Thompson Jr, Barton H				
LAW 224B	FEDERAL LITIGATION IN A GLOBAL CONTEXT: METHODS AND PRACTICE	2.00	2.00	H	
Instructor:	Thesing, Alicia Ellen				
LAW 7017	CREATION OF THE CONSTITUTION	4.00	4.00	P	
Instructor:	McConnell, Michael				
LAW TERM UNTS:	10.00	LAW CUM UNTS:	39.00		

2022-2023 Autumn

Course	Title	Attempted	Earned	Grade	Equiv
LAW 400	DIRECTED RESEARCH	3.00	3.00	H	
Instructor:	Nyarko, Julian				
LAW 2002	CRIMINAL PROCEDURE: INVESTIGATION	4.00	4.00	H	
Instructor:	Weisberg, Robert				
LAW 7108	STATE CONSTITUTIONAL LAW	3.00	3.00	H	
Instructor:	Schacter, Jane				
LAW 7836	ADVANCED LEGAL WRITING: APPELLATE LITIGATION	3.00	3.00	MP	
Instructor:	Makhzoumi, Katherine				
LAW TERM UNTS:	13.00	LAW CUM UNTS:	52.00		

2022-2023 Winter

Course	Title	Attempted	Earned	Grade	Equiv
LAW 400	DIRECTED RESEARCH	2.00	2.00	H	
Instructor:	Thompson Jr, Barton H				
LAW 1013	CORPORATIONS	4.00	4.00	P	
Instructor:	Milhaupt, Curtis				
LAW 7001	ADMINISTRATIVE LAW	4.00	4.00	H	
Instructor:	Freeman Engstrom, David				
LAW TERM UNTS:	10.00	LAW CUM UNTS:	62.00		

2022-2023 Spring

Course	Title	Attempted	Earned	Grade	Equiv
LAW 884	EXTERNSHIP, SPECIAL CIRCUMSTANCES	12.00	0.00		
Instructor:	Weisberg, Robert				
LAW TERM UNTS:	0.00	LAW CUM UNTS:	62.00		

Information must be kept confidential and must not be disclosed to other parties without written consent of the student.

Worksheet - For office use by authorized Stanford personnel Effective Autumn Quarter 2009-10, units earned in the Stanford Law School are quarter units. Units earned in the Stanford Law School prior to 2009-10 were semester units. Law Term and Law Cum totals are law course units earned Autumn Quarter 2009-10 and thereafter.

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

Law Unofficial Transcript

Name : Fann,Hutchinson
Student ID : 06115479

END OF TRANSCRIPT

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Worksheet - For office use by authorized Stanford personnel Effective Autumn Quarter 2009-10, units earned in the Stanford Law School are quarter units. Units earned in the Stanford Law School prior to 2009-10 were semester units. Law Term and Law Cum totals are law course units earned Autumn Quarter 2009-10 and thereafter.

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Unofficial Transcript
Pomona College

Name: Hutchinson C. Fann

DOB(MM/DD): 11/16

Student ID: 10349693

Curr Enr Stat: Graduated

Academic Stat: Good standing

Plan Grad Sess/Yr: Spring Term 2021

Degree Date: 05/14/21

Class: Graduated

Degree: Bachelor of Arts

Advisor: Dettmar, Kevin J.H.

Major(s): Phil, Poli, & Econ-Poli

Printed 06/11/21

-----				PE 084 JP	Weights-Free Weights	0.25 P
----- Allowed Transfer Credits -----				RUST100 PO	Tolstoy, Dostoevsky, Chekhov	1.00 A
Transfer Total from Advanced Placement Exam Credit				12/21/2018 Pomona College Scholar		
AWARDED: 2.00						

				EARNED	IN GPA	GPA POINTS
				GPA		
Transfer work from AP Exams				sess	5.25	4.50
				cum	16.50	13.50
						54.00
						12.000
						160.00
						11.851
ENGLA English Language & Composition						
HISTA American History						
PHYSB Physics B						
SPAN1 Spanish Language & Composition						
Transfer work from Advanced Placement Exam Credit						
AWARDED CREDIT						
----- Fall Term 2017 -----						
ID 001 PO	Critical Inquiry Seminar	1.00 A				
Running for Office						
MUS 100GUPO	Guitar Level II (Indiv Instr)	0.50 A				
POLI001A PO	Classical Political Theory	1.00 A				
POST115 PZ	Challenges for Dev Democracies	1.00 A				
SPAN140 PO	From Borges to "Literatura Lite"	1.00 A-				
12/15/2017 Pomona College Scholar						
				EARNED	IN GPA	GPA POINTS
				GPA		
				sess	5.00	4.50
				cum	21.50	18.00
						54.00
						12.000
						214.00
						11.888
----- Spring Term 2018 -----						
BIOL001A PO	Human Genetics for Non-Majors	1.00 A				
ENGL055A PO	Impossible Novels	1.00 A+				
ENGL093 PO	Rock & Roll Writing	1.00 A				
MUS 040 PPO	Chamber Music	0.25 P				
MUS 100GUPO	Guitar Level II (Indiv Instr)	0.50 A				
PHIL043 PO	Continental Thought	1.00 A-				
05/11/2018 Pomona College Scholar						
				EARNED	IN GPA	GPA POINTS
				GPA		
				sess	4.45	4.45
				cum	25.95	22.45
						53.40
						12.000
						267.40
						11.910
----- Spring Term 2019 -----						
ECON052 PO	Principles: Microeconomics	1.00 A				
MUS 010VOPO	Voice Level I (Indiv Instr)	0.25 P				
MUS 100GUPO	Guitar Level II (Indiv Instr)	0.50 A				
PE 075B PO	Swimming - Intermediate	0.25 P				
PHIL032 PO	Ethical Theory	1.00 A				
PHIL034 PO	Philosophy of Law	1.00 A				
POLI090 PO	Statistics	1.00 A				
05/17/2019 Pomona College Scholar						
----- Fall Term 2019 -----						
OXFO001	Theory of Politics	1.78 A				
OXFO002	International Relations Core	0.89 A+				
OXFO003	Marx and Marxism	1.78 A+				
Pomona Study Abroad/England						
Oxford University College						
				EARNED	IN GPA	GPA POINTS
				GPA		
				sess	4.45	4.45
				cum	25.95	22.45
						53.40
						12.000
						267.40
						11.910
----- Spring Term 2020 -----						
OXF004	Intl Relations in Cold War Era	0.89 P				
OXF005	Poli Thought: Bentham to Weber	1.78 P				
OXF006	Poli Thought: Plato to Rousseau	0.88 P				
Pomona Study Abroad/England						
Oxford University College						
05/15/2020 COVID-19:Enrollment & grades						
reflect disruption of SP 2020.						
				EARNED	IN GPA	GPA POINTS
				GPA		
				sess	3.55	0.00
				cum	29.50	22.45
						0.00
						0.000
						267.40
						11.910
----- Fall Term 2020 -----						
ECON121 PO	Economics of Gender & the Family	1.00 A				
To be continued						

Printed on 06/11/2021

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Unofficial Transcript
Pomona College

Name: Hutchinson C. Fann

Student ID: 10349693

HUM 196 PO Humanities Studio Seminar 0.50 P
PPE 160 PO Freedom, Markets, & Well-Being 1.00 A

	EARNED	IN GPA	GPA POINTS	GPA
sess	2.50	2.00	24.00	12.000
cum	32.00	24.45	291.40	11.918

Spring Term 2021

ECON199DRPO Economics: Directed Readings 1.00 A
Microeconomic Theory and PPE
HUM 196 PO Humanities Studio Seminar 0.50 P
PPE 195 PO Philo/Politics/Econ Sr Exercise 1.00 A

	EARNED	IN GPA	GPA POINTS	GPA
sess	2.50	2.00	24.00	12.000
cum	34.50	26.45	315.40	11.924

05/14/2021 Distinction in the Sr Exercise

05/14/2021 Magna Cum Laude

Pomona College

Degree: Bachelor of Arts

Awarded: 05/14/2021

Major(s): Phil, Poli, & Econ-Poli

The Family Educational Rights and Privacy Act of
1974 prohibits the release of this information
without the student's written consent.